

United States  
Court of Appeals  
for the Ninth Circuit

---

SANTOS CUADRA, Appellant,  
vs.

QUEEN FISHERIES, INC., a corporation, and  
E. H. BENDIKSEN, doing business as E. H.  
Bendiksen Co., Appellees.

---

Transcript of Record

---

Appeal from the United States District Court for the Western  
District of Washington, Northern Division

FILED

FEB 23 1956

PAUL P. O'BRIEN, CLERK



No. 14969

---

United States  
Court of Appeals  
for the Ninth Circuit

---

SANTOS CUADRA, Appellant,  
vs.

QUEEN FISHERIES, INC., a corporation, and  
E. H. BENDIKSEN, doing business as E. H.  
Bendiksen Co., Appellees.

---

Transcript of Record

---

Appeal from the United States District Court for the Western  
District of Washington, Northern Division

---



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amended Notice of Appeal .....	21
Answer .....	6
Appeal:	
Amended Notice of .....	21
Certificate of Clerk to Transcript of Record on .....	25
Cost Bond on .....	21
Designation of Record on .....	24
Notice of .....	20
Statement of Points and Designation of Rec- ord on (USCA) .....	170
Statement of Points on (DC).....	23
Certificate of Clerk to Transcript of Record...	25
Complaint .....	3
Cost Bond on Appeal .....	21
Designation of Record on Appeal (DC).....	24
Designation of Record, Statement of Points and (USCA) .....	170
Findings of Fact and Conclusions of Law.....	15

Judgment .....	19
Names and Addresses of Attorneys.....	1
Notice of Appeal .....	20
Amended .....	21
Pretrial Order .....	9
Statement of Points and Designation of Record (USCA) .....	170
Statement of Points on Appeal (DC).....	23
Transcript of Proceedings and Testimony.....	27

### Witnesses:

#### Bendiksen, Erling H.

—direct (Poth) .....	100
—direct (Merrick) .....	157
—cross (Poth) .....	165, 167

#### Cuadra, Santos

—direct (Poth) .....	118
—cross (Merrick) .....	133
—redirect (Poth) .....	149
—recross (Merrick) .....	151
—direct (Merrick) .....	153

#### Diempo, Veancio

—direct (Soriano) .....	87
—cross (Merrick) .....	93
—redirect (Soriano) .....	99
—recross (Merrick) .....	99

#### Price, William C.

—direct (Poth) .....	78
—cross (Merrick) .....	85

## Transcript of Proceedings—(Continued)

## Witnesses—(Continued)

Rickett, Howard W.

—direct (Poth) .....	60
—cross (Merrick) .....	72
—redirect (Poth) .....	75, 77
—recross (Merrick) .....	76, 78

Stewart, John E.

—direct (Poth) .....	45
—cross (Merrick) .....	52
—redirect (Poth) .....	58
—recross (Merrick) .....	59

Vequilla, Luciano

—direct (Soriano) .....	28
—cross (Merrick) .....	36
—redirect (Soriano) .....	43





NAMES AND ADDRESSES OF ATTORNEYS

ZABEL & POTH,

518 Fourth & Pike Building,  
Seattle 1, Washington,

Attorneys for Appellant.

SWEET, WOLF & MERRICK,

1015 Joseph Vance Building,  
Seattle 1, Washington,

Attorneys for Appellees.

THE UNIVERSITY OF CHICAGO

CHICAGO, ILL.

1900

1901

1902

1903

1904

1905

1906

In the District Court of the United States, Western  
District of Washington, Northern Division

Civil Action No. 3753

SANTOS CUADRA, Plaintiff,

vs.

QUEEN FISHERIES, INC., a corporation; and,  
E. H. BENDIKSEN, dba E. H. BENDIK-  
SEN CO., Defendants.

### COMPLAINT

Action Under Special Rule for Seamen to Sue  
Without Security and Prepayment of Fees

Comes now the plaintiff and for cause of action  
against the defendants, complains and alleges as  
follows, to-wit:

#### I.

That the plaintiff is a resident of Seattle, King  
County, State of Washington.

#### II.

That the defendant corporation is a resident of  
Seattle, King County, State of Washington, and  
maintains its principal place of business in said  
place within the jurisdiction of the above entitled  
Court; that the defendant, E. H. Bendiksen, is  
now, and at all times hereinafter mentioned, has  
been, a resident of King County, Washington,  
doing business as E. H. Bendiksen Co., with offices

in the Lyons Building, in Seattle, King County, Washington, and is the owner of all of the capital stock in the defendant corporation, Queen Fisheries, Inc.

### III.

That at all times hereinafter mentioned, the defendants were the owners and operators of the motor vessel, Alaska Queen.

### IV.

That at all times hereinafter mentioned, the plaintiff was employed on said vessel by the defendants, as a fish butcher and ordinary seaman at the wage rate of \$285.00 per month, together with overtime and maintenance; that at all times hereinafter mentioned said vessel was an American vessel, and the plaintiff became a member of the crew of said vessel; that on the 20th day of July, 1953, while said vessel was in the navigable waters of Bristol Bay, Alaska, near Naknek, plaintiff was ordered and directed by the defendants to show cases of canned salmon aboard a barge moored alongside the said vessel, Alaska Queen; that when the plaintiff boarded said barge, in the course of his duties, as aforesaid, he was grievously injured, as more fully hereinafter set out.

### V.

That plaintiff's injuries were solely and proximately caused by reason of the negligence of the

defendants, their agents, servants and employees, in that they failed and neglected to supply the plaintiff with a safe place in which to work; failed to properly superintend and supervise the work going on at the time plaintiff was injured; and, failed to promulgate proper and safe rules for the conduct of said work, and to warn the plaintiff of the impending dangers; that by reason of the foregoing, plaintiff, while using due care and caution on his part, sustained severe and permanent injuries to his left knee and left leg when a floor of plywood dunnage, negligently laid as a flooring in the hold of said barge, suddenly and without warning, gave way and caused plaintiff's injuries herein complained of; that by reason of said injuries, plaintiff has been confined in a hospital; that he has been required by said injuries to have an operation upon his left knee; that he has suffered, and will continue to suffer, great pain, agony and mental anguish; that he has incurred expense for medical and surgical attention and medicines; has lost, and will lose, large sums of money which he otherwise would have earned as wages and the expense of his board and lodging, which he otherwise would have earned; that he has been permanently injured, and will be unable to pursue his usual occupation because of the permanency of his injuries, all to his damage in the sum of \$50,000.00.

Wherefore, Plaintiff prays that he have judgment against the defendants, and each of them, in the

sum of \$50,000.00, together with his costs and disbursements herein to be taxed.

ZABEL & POTH

/s/ By OSCAR A. ZABEL,

Attorneys for Plaintiff

[Endorsed]: Filed July 22, 1954.

---

[Title of District Court and Cause.]

### ANSWER

Come now the defendants and for answer to the complaint of the plaintiff on file herein, admit, deny and allege as follows:

#### I.

Defendants do not have sufficient information or knowledge relative to the allegations of paragraph I and, therefore, deny the same.

#### II.

Answering paragraph II, defendants admit the same.

#### III.

Answering paragraph III, defendants allege that the said vessel, Alaska Queen, was owned and operated by the Queen Fisheries, Inc., and not by E. H. Bendiksen Co.

#### IV.

Answering paragraph IV, the defendants deny that they employed plaintiff as ordinary seaman, and also deny that plaintiff was a member of the



crew of said vessel. Defendants further deny that plaintiff was injured while aboard said vessel and in navigable waters.

### V.

Answering paragraph V, defendants deny each and every allegation therein contained.

Further Answering the complaint of the plaintiff, and by way of a First Affirmative Defense thereto, the defendants allege that if the plaintiff has been injured and/or damaged as in his complaint alleged, or at all, that said injuries and/or damages were solely and proximately caused by and contributed to by the negligence of the plaintiff, and that at the time immediately preceding the accident, he placed himself in a position of obvious danger, when positions of safety were available to him in the course of his work, and that in assuming said dangerous position, he assumed the risk of a perilous situation created by his own act.

Further Answering the complaint of the plaintiff, and by way of a Second Affirmative Defense thereto, the defendants allege that immediately following the injury, the plaintiff was afforded hospitalization, medical treatment and compensation under the terms and provisions of the Workmen's Compensation Act of Alaska; that said compensation and medical treatment amounted to the approximate sum of \$2,240.51.

At Section 43-3-30 of the Workmen's Compensation Act of Alaska in effect at the time of plaintiff's alleged injuries, provides as follows:

“Where the injury for which compensation is payable hereunder was caused under circumstances creating a legal liability in someone other than the employer to pay damages in respect thereof, the employee may take proceedings against the one so liable to pay damages and against anyone liable to pay compensation under this Act but shall not be entitled to receive both damages and compensation. And if the employee has been paid compensation under this Act, the employer by whom the compensation was paid shall be entitled to indemnity from the person, firm or corporation so liable to pay damages as aforesaid, and to the extent of such indemnity shall be subrogated to the rights of the employee to recover damages therefor.”

That by reason of the foregoing provision of the Workmen's Compensation Act of Alaska and the election by the plaintiff to receive compensation under said Act, the plaintiff is precluded from suing these defendants and said action should be dismissed.

Further Answering the complaint of the plaintiff and by way of a Third Affirmative Defense thereto, defendants allege that if the plaintiff has been injured and/or damaged as in his complaint alleged, or at all, said injuries were received by the plaintiff while acting as a longshoreman employed on navigable waters of the United States, and his injury was exclusively subject to the provisions of the Longshoremen's and Harbor Workers Act, and that under the terms of said Act, the plaintiff cannot



maintain a suit against his employers, and that by reason thereof this action should be dismissed.

Wherefore, Having fully answered the complaint of the plaintiff, the defendants pray that they may be dismissed, and recover their costs and disbursements herein to be taxed.

SWEET, WOLF & MERRICK,  
/s/ H. J. MERRICK,  
Attorneys for Defendants

Duly Verified.

[Endorsed]: Filed August 30, 1954.

---

[Title of District Court and Cause.]

### PRETRIAL ORDER

As the result of a pretrial conference heretofore had on May 5, 1955, in Room 612 of the U.S. Courthouse, Seattle, Washington, where the Honorable William J. Lindberg presided, the plaintiff being represented by Milton H. Soriano of Zabel & Poth, and the defendants being represented by Joseph Merrick of Sweet, Wolf & Merrick, their attorneys of record, the following issues of fact and law were framed and exhibits identified:

#### Admitted Facts

The following are the admitted facts herein:

1. That the plaintiff is a resident of Seattle, King County, Washington.

2. That the defendant, Queen Fisheries, Inc., a domestic corporation, is situated in Seattle, King County, Washington, and maintains its principal place of business in Seattle, King County, Washington, within the jurisdiction of the above entitled Court. That the defendant, E. H. Bendiksen, is a resident of King County, Washington, doing business as E. H. Bendiksen & Company, and that said defendant is the owner of all the capital stock in the defendant corporation, Queen Fisheries, Inc.

3. That at all times, hereinafter mentioned, the defendants were the owners and operators of the motor vessel Alaska Queen.

4. That the plaintiff was hired on said vessel by the defendants as a fish butcher doing miscellaneous jobs on and about said vessel. That the plaintiff was receiving the wage of \$285 per month, together with overtime and maintenance. That the vessel Alaska Queen was an American vessel. That the plaintiff joined said vessel on July 20, 1953, while said vessel was in the navigable waters of Bristol Bay, Alaska, near the Town of Naknek. That the plaintiff was ordered and directed by defendants to stow cases of salmon aboard a barge moored alongside said vessel. That when the plaintiff was on board said barge in the course of his duties, he was injured.

### Plaintiff's Contentions

The plaintiff's contentions are as follows:

1. Plaintiff contends that he was a seaman and

crew member of the vessel *Alaska Queen* and was under the directions, orders and supervision of the master and owner of said vessel.

2. That the plaintiff's injuries were solely and proximately caused by reason of the negligence of the defendants, their agents, servants and employees, in that they failed and neglected to supply the plaintiff with a safe place in which to work, and failed to properly superintend and supervise the work going on at the time plaintiff was injured. That the defendants failed to promulgate proper and safe rules for the conduct of said work and to warn the plaintiff of the impending dangers. That the plaintiff, while using due care and caution on his part, sustained severe and permanent injuries to his left knee and left leg, when a floor of plywood dunnage, negligently laid in the hold of said barge, suddenly and without warning gave way and caused plaintiff's injuries herein complained of.

3. That by reason of said injuries, plaintiff has been confined in a hospital. That he has been required by said injuries to have an operation on his left knee. That he has suffered and will continue to suffer great pain, agony and mental anguish. That he has incurred expenses for medical and surgical attention and medicines. That the plaintiff has lost and will lose large sums of money which he otherwise would have earned as wages, and that the plaintiff has lost large sums of money for the expense of his maintenance and cure that plaintiff would otherwise have earned. That the plaintiff has

been permanently injured and will be unable to pursue his occupation because of the permanency of his injuries. That the plaintiff has been damaged in the sum of \$50,000.

### Defendants' Contentions

Defendants' contentions are as follows:

1. Defendants deny that plaintiff was a seaman and also deny that plaintiff was a member of the crew of said vessel.

2. Defendants deny that said vessel was in navigable waters.

3. Defendants contend that if the plaintiff was injured and/or damaged as alleged, that the injuries and/or damages were solely and proximately caused by and contributed to by the negligence of the plaintiff, and that the plaintiff placed himself in a position of obvious danger.

4. Defendants contend that positions of safety were available to the plaintiff in the course of his work.

5. That because of defendants' allegation that plaintiff was not a seaman and crew member of the vessel *Alaska Queen*, the plaintiff should seek remedy, if any remedy he has, under the Workmen's Compensation Act of Alaska and under Section 43-330 of said Act, and that the plaintiff shall not be entitled to receive both damages and compensation. That the plaintiff has made the election to receive compensation under said Act, and therefore should be precluded from suing the defendants herein.



6. That the plaintiff, if injured at all, was injured while acting as a longshoreman employed on the navigable waters of the Territory of Alaska, and his injuries were exclusively subject to the Longshoremen's & Harbor Workers' Act, and that under the terms of said Act, the plaintiff cannot maintain a suit against his employers.

### Issues of Fact

The following are the issues of fact to be determined by the Court herein:

1. Whether the plaintiff was employed as a seaman and/or crew member of the vessel *Alaska Queen*.

2. Whether the *Alaska Queen* was in navigable waters.

3. Whether the plaintiff was acting as a seaman or crew member of the *Alaska Queen* while carrying out his duties under the direction and supervision of the master and owner of said vessel.

4. Whether as a seaman or crew member of said vessel the plaintiff was acting as a seaman or crew member while engaged in stowing salmon on board a barge owned by the defendants and moored to the vessel *Alaska Queen*.

5. Whether or not the plaintiff sustained permanent injuries, if any, and the permanency of said injuries, if any, that the plaintiff sustained while engaged in his work and duties of stowing salmon.

6. Whether the defendants were negligent toward the plaintiff in not providing the plaintiff with a safe place in which to work.

## Issues of Law

The following are the issues of law to be determined by the Court:

1. Whether the plaintiff was a seaman and/or crew member of the vessel *Alaska Queen*.
2. Whether the plaintiff is subject to the provisions of the Longshoremen's & Harbor Workers' Act.
3. Whether the plaintiff should seek his remedy under the Alaska Workmen's Compensation Act.
4. Whether the plaintiff as a seaman is entitled to recover against the defendants because of the negligent acts of the defendants.

The foregoing pretrial order has been approved by the parties hereto, as evidenced by the signatures of their counsel hereon, and upon the filing hereof the pleadings pass out of the case and are superseded by this order, which shall not be amended except by agreement of the parties on order of the Court.

Dated this 9th day of May, 1955.

/s/ WILLIAM J. LINDBERG,  
U.S. District Judge

Approved:

/s/ Milton H. Soriano,  
Of Attorneys for Plaintiff

/s/ H. J. Merrick,  
Of Attorneys for Defendants

[Endorsed]: Filed May 9, 1955.

[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on regularly for trial before The Honorable William J. Lindberg, United States District Judge, on the 17th and 18th days of May, 1955, the plaintiff appearing in person and through his attorneys, Zabel & Poth; the defendants appearing through E. H. Bendiksen and Sweet, Wolf & Merrick, their attorneys; witnesses having been called and testified on behalf of both parties; documentary evidence having been adduced; the court having heard argument by both counsel; and having considered Briefs filed by both counsel; having fully examined the record herein and being fully advised in the premises, now makes the following

### Findings of Fact

#### I.

That the plaintiff is a resident of Seattle, King County, State of Washington.

#### II.

That the defendant, Queen Fisheries, Inc., is a corporation, duly organized under and existing by virtue of the laws of the State of Washington, having an office and principal place of business within this jurisdiction, at Seattle, King County, Washington; that the defendant, E. H. Bendiksen, d/b/a E. H. Bendiksen Co., is a resident of King County,

Washington, with office in Seattle, King County, Washington.

### III.

That at all times material hereinafter mentioned, the defendants were the owners and operators of that certain motor vessel known as the Alaska Queen, a vessel of some 297 tons.

### IV.

That the plaintiff herein, Santos Cuadra, was employed by the defendants during the canning season of 1953 as a fish butcher aboard the floating cannery, Alaska Queen, said plaintiff being employed and hired through the Alaska Fish Cannery Workers Union in Seattle.

### V.

That said plaintiff was transported to Bristol Bay, the defendants' canning operations, and returned from there to Seattle by air after the completion of the 1953 canning season.

### VI.

That the Alaska Queen, prior to the start of fishing operations in the Bristol Bay area, is sailed north to the fishing area by its regular crew, consisting of a master, mate, two engineers, three deckhands and a cook, and that said crew again at the close of the season sailed said vessel back to Seattle from the site of canning operations in Bristol Bay.

### VII.

That while said vessel is in the Bristol Bay area,



it is tied up to a dock as a floating cannery, and said vessel must be tied up at the shore in order to operate as a cannery, inasmuch as said industrial operation cannot be conducted without a steady supply of fresh water from the beach to be used in the boiler and in the cleaning and canning of the salmon. That in addition, said floating cannery must be tied up to the beach in order to have warehousing facilities on the beach for the cooling and storing of the canned salmon.

### VIII.

That the plaintiff is a member of the Filipino cannery crew and is supervised separately from the regular crew of the vessel, who are under the supervision of the master of the vessel. That the cannery workers are paid pursuant to the cannery workers contract, and the regular crew of the vessel are paid based upon a percentage of the pack.

### IX.

That on or about the 20th day of July, 1953, while said vessel, Alaska Queen, was tied up to the dock at a place in navigable waters, said plaintiff was engaged with other members of the Filipino cannery crew and the resident Indian cannery workers in stacking canned salmon aboard a barge moored alongside the Alaska Queen, said canned salmon being taken out of the warehouse on the beach via a conveyor belt onto the deck of the Alaska Queen, and then via conveyor belt into the barge moored alongside. That while the plaintiff was so engaged, he fell and injured his knee.

## X.

That immediately following said injury, the plaintiff was afforded by the defendants herein hospitalization, medical treatment and compensation, under the terms and provisions of the Workmen's Compensation Act of Alaska, said Act being Section 43-3-1 of the Alaska Code of 1949.

From the Foregoing Findings of Fact, the court now makes the following

## Conclusions of Law

## I.

That the plaintiff herein is not a seaman or a member of the crew within the meaning of the Jones Act, but is an industrial worker and that his claim comes within the jurisdiction of the Alaska Workmen's Compensation Act, Section 43-3-1 of the Alaska Code of 1949.

## II.

That plaintiff's complaint is dismissed with prejudice and without costs.

Dated this 17th day of October, 1955.

/s/ WILLIAM J. LINDBERG,  
Judge

Presented by:

SWEET, WOLF & MERRICK,  
/s/ H. J. MERRICK,  
Attorneys for Defendants

Acknowledgment of Service attached.

[Endorsed]: Filed October 17, 1955.

In The District Court of The United States, Western District of Washington, Northern Division

Civil Action—No. 3753

SANTOS CUADRA,

Plaintiff,

vs.

QUEEN FISHERIES, INC., a corporation, and  
E. H. BENDIKSEN, d/b/a E. H. BENDIK-  
SEN CO., Defendants.

### JUDGMENT

This matter having come on regularly for trial before The Honorable William J. Lindberg, United States District Judge, on the 17th and 18th days of May, 1955; the plaintiff appearing in person and through his attorneys, Zabel & Poth; the defendants appearing through E. H. Bendiksen and Sweet, Wolf & Merrick, their attorneys; witnesses having been called and testified on behalf of both parties; documentary evidence having been adduced; the court having heard argument by both counsel, and having considered Briefs filed by both counsel; having duly examined the record herein and being fully advised in the premises; and this court having heretofore entered its Findings of Fact and Conclusions of Law; therefore,

It Is Hereby Ordered, Adjudged and Decreed that the plaintiff's complaint herein is dismissed with prejudice and without costs.

Dated this 17th day of October, 1955.

/s/ WILLIAM J. LINDBERG,  
Judge

Presented by:

SWEET, WOLF & MERRICK,  
/s/ H. J. MERRICK,  
Attorneys for Defendants

Acknowledgment of Service attached.

[Endorsed]: Filed and Entered Oct. 17, 1955.

---

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To: Honorable Judge of the Above Entitled Court.

Notice Is Hereby Given that Santos Cuadra, the above named plaintiff, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment of dismissal of plaintiff's cause of action with prejudice entered in this action on the 7th day of October, 1955.

Dated this 7th day of November, 1955.

ZABEL & POTH,  
/s/ By OSCAR A. ZABEL,  
Attorneys for Plaintiff

[Endorsed]: Filed November 7th, 1955.

[Title of District Court and Cause.]

### AMENDED NOTICE OF APPEAL

To: Honorable Judge of the Above Entitled Court.

Notice Is Hereby Given that Santos Cuadra, the above named plaintiff, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment of dismissal of plaintiff's cause of action with prejudice entered in this action on the 17th day of October, 1955.

Dated this 8th day of November, 1955.

ZABEL & POTH,  
/s/ By OSCAR A. ZABEL,  
Attorneys for Plaintiff

[Endorsed]: Filed November 8, 1955.

---

[Title of District Court and Cause.]

### COST BOND ON APPEAL

Know All Men by These Presents: That we, Santos Cuadra, as principal and National Surety Corporation, a corporation, as surety, organized under the laws of the State of New York, and authorized to transact business as surety in the State of Washington, are held and firmly bound to the Queen Fisheries, Inc., a corporation, and E. H. Bendiksen, d/b/a E. H. Bendiksen Co., defendants in the above matter, in the full and just sum of \$250 to be paid to said Queen Fisheries, Inc., and E. H.



Bendiksen, d/b/a E. N. Bendiksen Co., their heirs, executors, administrators or assigns, to which payment truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Signed, Sealed and Executed this 7th day of November, 1955.

Whereas, lately in a District Court of the United States for the Western District of Washington, Northern Division, in a suit in said Court between Santos Cuadra as plaintiff and Queen Fisheries, Inc., and E. H. Bendiksen, d/b/a E. H. Bendiksen, as defendants, a judgment was rendered against said plaintiff on October 17, 1955, dismissing plaintiff's action and Complaint with prejudice. That said plaintiff has filed in said Court a Notice of Appeal to the U.S. Circuit Court of Appeals, Ninth Circuit, to reverse the judgment and decree made and entered herein in the aforesaid suit on October 17, 1955, dismissing plaintiff's action and Complaint and from each and every part of said order and decree.

Now the condition of the above obligation is such that if said order and decree shall be satisfied and complied with, together with costs, interest and damages for delay; and if for any reason the appeal is dismissed or if the order and decree are affirmed; and if there shall be satisfied and complied with in full such modification of said judgment and decree and such costs, interest and damages as the Appellate Court may adjudge and award, and if the ap-

pellant and plaintiff shall fail to make his plea good, then the above obligation shall be void; otherwise it shall remain in full force and virtue.

SANTOS CUADRA,  
By ZABEL & POTH,  
/s/ By OSCAR A. ZABEL,  
Attorneys for Plaintiff

[Seal] NATIONAL SURETY CO.,  
/s/ By MILDRED PALITZKE,  
Its attorneys in fact

[Endorsed]: Filed November 7, 1955.

---

[Title of District Court and Cause.]

### STATEMENT OF POINTS

Comes now the plaintiff-appellant herein and pursuant to the rules sets forth the points on which he intends to rely as follows, to-wit:

1. That the Court committed reversible error in its entry of Findings of Fact, Conclusions of Law, and Judgment of Dismissal with prejudice of plaintiff's complaint;
2. The Court committed reversible error in not entering the judgment in favor of plaintiff-appellant against the defendant-respondents as prayed for by plaintiff's complaint;
3. That the trial Court committed reversible error in entering a Conclusion of Law that the plaintiff herein is not a seaman or a member of the crew

within the meaning of the Jones Act, but is an industrial worker and comes within the jurisdiction of the Alaska Workmen's Compensation Act.

Dated this 22nd day of November, 1955.

ZABEL & POTH,

/s/ By OSCAR A. ZABEL,

Attorneys for Plaintiff-Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed November 23, 1955.

---

[Title of District Court and Cause.]

#### DESIGNATION OF RECORD ON APPEAL

Comes now the plaintiff and designates the following as his record on appeal:

1. Complaint;
2. Answer;
3. Pre-Trial Order;
4. Findings of Fact and Conclusions of Law;
5. Judgment;
6. Notice of Appeal;
7. Amended Notice of Appeal;
8. Cost Bond on Appeal;
9. Designation of Record on Appeal;
10. Statement of Points Relied Upon on Appeal;
11. Reporter's Transcript of the Evidence and



Proceedings, excluding Opening Statements and Closing Statements.

ZABEL & POTH,  
/s/ By OSCAR A. ZABEL,  
Attorneys for Plaintiff-Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed November 23, 1955.

---

[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit and Rule 75(o) of the Federal Rules of Civil Procedure and designation of counsel, I am transmitting herewith, the following original papers in the file dealing with the action, as the record on appeal herein from the judgment filed Oct. 17, 1955, to the United States Court of Appeals at San Francisco, to-wit:

1. Complaint, filed July 22, 1954.
5. Answer, filed Aug. 30, 1954.
8. Pretrial Order, filed May 9, 1955.
16. Findings of Fact and Conclusions of Law, filed 10-17-55.

17. Judgment filed October 17, 1955.
18. Notice of Appeal, filed Nov. 7, 1955.
19. Cost Bond on Appeal, filed Nov. 7, 1955.
20. Amended Notice of Appeal filed Nov. 8, 1955.
23. Designation of Record on Appeal, filed Nov. 23, 1955.
22. Statement of Points Relied on Upon Appeal, filed 11-23-55.
21. Court Reporter's Transcript of Testimony and Proceedings, filed 11-23-55.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparation of the record on appeal in this cause, to-wit:

Notice of Appeal, \$5.00; and that said amount has been paid to me by the attorneys for the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 29th day of November, 1955.

[Seal]

MILLARD P. THOMAS,  
Clerk

/s/ By TRUMAN EGGER,  
Chief Deputy

In The District Court of the United States, Western District of Washington, Northern Division

Civil Action—No. 3753

SANTOS CUADRA,

Plaintiff,

vs.

QUEEN FISHERIES, INC., a corporation; and  
E. H. BENDIKSEN, dba E. H. BENDIKSEN  
CO., Defendants.

### TRANSCRIPT OF PROCEEDINGS

Tuesday, May 17, 1955, Wednesday, May 18, 1955

Be It Remembered that the aforementioned case came on for trial in the District Court of the United States for the Western District of Washington, Northern Division, on Tuesday, May 17, 1955, May 18, 1955, and concluded after argument on Friday, May 20, 1955.

#### Appearances:

Philip J. Poth and Milton H. Soriano (Poth & Zabel), 518 Fourth & Pike Building, Seattle 1, Washington, appearing for and on behalf of the Plaintiff, Santos Cuadra. H. J. Merrick, Esq. (Sweet, Wolf & Merrick), 1015 Joseph Vance Building, Third & Union Street, Seattle 1, Washington, appearing for and on behalf of Defendant, Queen Fisheries, Inc., a corporation; and E. H. Bendiksen, dba E. H. Bendiksen Company.

Mr. Poth: Does the Court desire an opening statement?

The Court: Well, I don't know that it is necessary. We have a pre-trial order in here.

Mr. Soriano: I would like to call Mr. Luciano Vequilla.

LUCIANO VEQUILLA

a witness called by the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Soriano:

Q. Will you state your name please?

A. Luciano Vequilla.

Q. Where do you live, Mr. Vequilla?

A. I live in Delano, California.

Q. What is your occupation, Mr. Vequilla?

A. Laborer.

Q. In the year of 1953 did you have the occasion to be employed by Queen Fisheries, Inc.?

A. Yes, sir.

Q. Where were you working when employed by Queen Fisheries?

A. In the Bristol Bay Area.

Q. In Bristol Bay? A. Yes. [1\*]

Q. While in Bristol Bay where were you stationed? Where were you working with regard to your employment?

A. We were working in the boat.

Q. On the "Alaska Queen"? A. Yes.

Q. While working on the Alaska Queen what

---

\* Page numbers appearing at foot of page of original Reporter's Transcript of Record.

(Testimony of Luciano Vequilla.)

was the nature of your duties, and what type of work did you perform? What kind of work did you do?      A. Oh, general work.

Q. And where were your quarters while working on the Alaska Queen, Mr. Vequilla?

A. Quarters? What do you mean?

Q. Where did you sleep?      A. In the boat.

Q. On the vessel?      A. In the vessel.

Q. I see. Who slept there with you? Could you tell me who else?

A. The members of the gang.

Q. The members of the crew?

A. The crew.

Q. Where did you eat?      A. In the boat.

Q. Who prepared your food for you?

A. Yes, we sleep in the boat and we eat in the boat.

Q. Was the food prepared on board the vessel? Was the [2] food cooked on the ship?

A. They got a cook.

The Court: (Witness admonished to speak louder.)

They ate on the boat.

Mr. Soriano: Yes, he ate and he slept on the boat.

Q. Mr. Vequilla, will you state to the court what other types of duties, what other work you performed while on the vessel?

A. Well, we worked all around.

Q. You worked all around. Did you have occasion to work on board a scow or a barge?



(Testimony of Luciano Vequilla.)

A. Yes, we worked in the barge.

Q. What were you doing on the scow?

A. We were loading the salmon cases.

Q. You were loading the salmon cases. And where was the scow?

A. The scow was tied up on the side of the Alaska Queen.

Q. On the side of the Alaska Queen. How did the scow get alongside the Alaska Queen?

A. Oh, they tied up on the side of the Alaska Queen.

Q. You were loading salmon cases?

A. Loading cases, yes.

Q. Where were these salmon cases coming from?

A. From the warehouse.

Q. From the warehouse? A. Yes. [3]

Q. And from the warehouse they passed over to the Alaska Queen?

A. Alaska Queen, through the rollers.

Q. On rollers?

A. On rollers there to the scow.

Q. Can you describe to me what was the barge like that you were working on? What were the circumstances under which you were working?

A. The barge, before we started loading, we put boards.

Q. Platforms or boards?

A. Platforms over the whole barge.

Q. Over the whole barge?

A. Over the whole barge, you know, we put platforms, so as soon as we finished——

(Testimony of Luciano Vequilla.)

Q. (Interposing) What was the nature, what types of boards were they?

A. Well, they were divided into pieces, you know, not the same size of board.

Q. Divided into pieces, not the same size boards. Were they all the same?

A. Not the same——

Q. (Interposing) ——types of material?

A. The same boards but not the same size of the boards, you know what I mean?

Q. Yes. [4]

A. That board—they put something underneath the ends.

Q. (Interposing) A block?

A. A block. So they put, we put all around in the barge.

Q. Now during the course of your duties on board the Alaska Queen who ordered you to take care of this work, who ordered you to do this work?

A. Mr. Benediction ordered us to put the boards inside of the scow.

Q. Who is Mr. Benediction? What was his capacity?

A. He is the boss over there in the Alaska Queen. He is the boss of the Alaska Queen.

Q. When you placed these boards on the barge was he there to supervise the work?

A. Yes, he was there. He is the one who instructed us to put all of the boards in before we started loading the cases of salmon.

(Testimony of Luciano Vequilla.)

Q. Now, you know Mr. Cuadra, of course. Was Mr. Cuadra on the barge there with you at the time this work was taking place?

A. Yes. He was there.

Q. Were you on the barge when Mr. Cuadra was injured?      A. Yes, sir.

Q. Did you see the accident?      A. Yes.

Q. Could you describe what occurred? [5]

A. Yes. The first time when the salmon shoot to the roller, go through to the barge, we take one by one. I was following him. He take one and he turn around, and then I take one and then I follow him because we are going to put in a pile that case of salmon. Then he missed the step of that board because that board was not secure.

Q. The board wasn't secured.

A. He missed his step on that board, you know. He stepped on the edge of that board, so the board fly up and hit his knee. He fell down.

Q. Was he able to get up?

A. He said he could hardly get up, and then somebody helped him to get up.

Q. Did you have an opportunity to observe his leg? Did you look at his leg?

A. Yes, I looked at his legs. They swelled up right away, you know.

Q. What happened to Mr. Cuadra after that?

A. Somebody took him upstairs in the ship.

Q. Was he able to work?

A. No, he could not work until we finished the season.



(Testimony of Luciano Vequilla.)

Q. I see.

Now, on this barge where did the platforms or dunnage, where did it come from? [6]

A. From the warehouse.

Q. From the warehouse? Who brought it there?

A. The natives just they work in the warehouse.

Q. The natives? A. The natives.

Q. And they were doing the work, and performing the work in the warehouse; they carried the boards to the Alaska Queen?

A. To on top of the Alaska Queen and somebody handed them down to the barge.

Q. Did you notice who was handling the barge lines as you were stowing the salmon?

A. We handled the barge lines.

Q. Well, you were the men that handled the barge lines? A. Yes.

Q. And you moved the barge back and forth according to where you wanted it stationed to load the salmon? A. Yes.

Q. Now when you first got on board the barge was the dunnage there? Were the platforms there?

A. No. The platforms were not in there yet.

Q. Who decided that the dunnage or platforms would be put on board the barge?

A. Mr. Benediction.

Q. Who did he instruct to put the—— [7]

A. To put the boards, all the boards around the barge.

Q. Who did he tell to do that?

A. Mr. Benediction.

(Testimony of Luciano Vequilla.)

Q. No, who? Mr. Benediction told whom to do what? The men that were working on the barge?

A. Yes, he instructed all of the boys to put in the——

Q. (Interposing) He directed you to put the——

Mr. Merrick: Let's let him testify, counsel. I know it is hard, but I don't think we should lead him so much.

Q. (By Mr. Soriano): As you were stowing the salmon, how did you stow it? Will you explain where you stowed the salmon?

A. Do you mean "piled" the salmon?

Q. Yes. A. In the barge.

Q. Pardon. Oh, in the barge?

A. We piled it in the barge.

Q. Where about in the barge?

A. Well, since we have the salmon——

Q. What I am trying to do is to take step by step the manner in which you stowed the salmon. Could you explain or describe where you stowed the salmon first?

A. When we take the salmon we walked to the place that we could start the piling and piled the salmon. [8]

Q. Tiers? A. Tier by tier.

Q. You didn't floor off the salmon?

A. No. We didn't put salmon by, you know, flat, but we just piled step by step, you know.

Q. Tier by tier? A. Tier by tier.

Q. What was on the floor of the barge? Were

(Testimony of Luciano Vequilla.)

there any salmon cases there at all that you could walk on?

A. No, there is no salmon, only the platform.

Q. Just the platform? A. Yes.

Q. What were the platforms used for? What was the purpose of the platforms?

A. They said it is to protect for the water so the cases of salmon wouldn't get wet.

Q. Was there anything else besides the platforms used? A. Well, that is all.

Q. Did you cover the salmon with anything?

A. Oh, as soon as we finished we just covered it up with a big canvas.

Q. When you were ordered to dunnage or platform the barge who instructed you as to how to perform that work or how to do it?

A. Mr. Benediction.

Q. Did he order you to floor off the entire [9] barge?

A. We put the entire barge in platforms, the whole, you know what I mean. We put the platforms before we started the loading.

Q. What is the usual way that a person would—have you had occasion to see other barges loaded with salmon? Have you worked at other canneries?

A. No, I never worked in the barge in the other canneries.

Q. You never worked in them?

A. Because there is somebody working, you know, there.

Q. You are not an experienced salmon stower?

(Testimony of Luciano Vequilla.)

A. Yes.

Q. You haven't stowed any salmon prior to this time then for other canneries?

A. Oh, no, no; not at any other cannery, no.

Q. On barges? A. No.

Mr. Soriano: I believe that is all of the questions that I have.

### Cross Examination

By Mr. Merrick:

Q. How long have you worked in salmon canneries? A. Oh, it is about since 1929.

Q. When did you come to this country from the Philippines? A. I came here in 1928.

Q. And you have worked in the canneries ever since 1928? [10]

A. Yes, I have worked in the canneries.

Q. Well, the Filipinos always stack the canned salmon in the warehouse, don't they?

A. Yes, in the warehouse.

Q. Well, that is the same type of work that you were doing in this barge, wasn't it? There is no difference?

A. Oh, no; it is different in the warehouse than in the barge.

Q. Well, you just stack the salmon up, don't you?

A. Well, of course, we stack in the cannery, I mean in the warehouse and in the barge different.

Q. By the way, is your full name "Luciano"——

A. Luciano Vequilla.

(Testimony of Luciano Vequilla.)

Q. Do you have a middle initial?

A. "S." Vequilla.

Q. Yes. Now, when did you first go to work for Mr. Bendickson?      A. In 1951.

Q. In 1951. And did you work there in 1952?

A. Yes.

Q. How about 1953? All of 1953?

A. Yes.

Q. Did you work there in 1954?      A. No.

Q. Was there any particular reason why you didn't work there in 1954? [11]

A. Well, he wrote a letter to me; it was in November, that he don't operate in 1954, so——

Q. (Interposing) He wouldn't hire you——

A. (Continuing) ——we don't work in his place.

Q. Now——      A. Well——

Q. Are you through?

A. And then I heard that he is going to operate.

Q. Well, he did operate last year, didn't he?

A. Yes.

Q. Now, how were you first hired to go to work for Mr. Bendickson?

A. Why, through his foreman boss because he got a foreman boss.

Q. Well, didn't you hire out through the cannery workers union?      A. Oh, yes.

Q. You have been a member of the cannery workers union for some years?      A. Yes, sir.

Q. And what union is that?

A. American Federation of Labor.

Q. And that is how you got your job with Mr.



(Testimony of Luciano Vequilla.)

Bendickson's cannery, is it not? A. Yes. [12]

Q. Now do you work under the Alaska Salmon Industry cannery contract?

A. Oh, before. There is no union before.

Q. I mean in 1953. A. Oh, in 1953?

Q. You worked under the union contract, did you not? A. Yes.

Q. And how were you paid?

A. Paid by guarantee.

Q. You got the season guarantee? A. Yes.

Q. And that is the guarantee that all of the cannery workers get, is it not? A. Yes, sir.

Q. You are guaranteed two months' pay?

A. Yes, sir.

Q. Now you were a retort man in the cannery, weren't you? A. Yes, sir.

Q. How long have you been a retort man? Have you worked at that job in other canneries?

A. Oh, I worked in the different canneries, I was working driving a jitney.

Q. Yes. A. And I worked retort too.

Q. Yes. A. In the different canneries.

Q. Now when you went to work for Mr. Bendickson in 1953 how did you get up to Alaska to work? A. By airplane.

Q. You didn't go up on the vessel?

A. No.

Q. You were flown up? A. Yes.

Q. Now when you got there the vessel was tied up, was it not? A. Yes.

Q. And it was tied up to the beach?



(Testimony of Luciano Vequilla.)

A. No, in the river.

Q. It was tied up in the river. Well, it was tied up to a pier, was it not?

A. Well, in the bank of the river anyway.

Q. Well, did this floating cannery move at any time while you were there?

A. It never moved.

Q. Not once?

A. It was just tied up in the bank of the river.

Q. And after the season was over and you had gotten your two months' guarantee how did you get back to Seattle?

A. By plane.

Q. You fly back. You didn't come back——

A. (Interposing) In the boat, no.

Q. (Continuing) ——on the floating cannery?

Q. They had a regular crew to take the vessel up and back, did they not?

A. Yes.

Q. Now you say you ate on the ship?

A. We ate on the ship.

Q. There wasn't any place for you to eat on the shore, was there?

A. Pardon me?

Q. There was no place to eat on the shore, was there?

A. No, no.

Q. Now the cannery crew is supervised by a Filipino cannery foreman, isn't it?

A. Yes, but——

Q. Well, it is run the same as any other cannery, isn't it?

A. Yes.

Q. Only it just has one line, just one cannery line?

A. Yes.

Q. Now when you work in this cannery line

(Testimony of Luciano Vequilla.)

there are also natives working there with you in the cannery line, are there not? The Indians also work in the cannery with you?

A. Well, some.

Q. Yes.

A. Someplace; not in the fish house. Mostly all in the fish house are Filipinos working in there.

Q. Well, the natives also work in this barge with you [15] stacking salmon, don't they?

A. Oh, some, because they need lots of boys to work in that barge. We cannot occupy all of the place anyway, so they put some of the natives to help us to pile it.

Q. In other words, you were all mixed together——

A. (Interposing) ——worked together.

Q. (Continuing)——working this barge stacking salmon? A. Yes, mixed together.

Q. And you also all work together on the cannery deck canning salmon? A. Yes.

Q. And also sometimes the Filipinos work in the warehouse on the beach with the Indians, don't they? A. Oh, yes.

Q. Now, how long have you known Mr. Cuadra?

A. I knew him for a long time; maybe 10 years I know him.

Q. The Filipino boys all slept together in one room, is that right? A. Yes, sir.

Q. You do not have any seaman's papers yourself, do you? A. No.

(Testimony of Luciano Vequilla.)

Q. You have always worked as a cannery worker yourself, is that right?

A. Oh, we work all around in the Queen Fisheries.

Q. Well, in other words, you did whatever they wanted you [16] to do working in the cannery operation, is that right?

A. Yes, sir.

Q. It is the same as any other cannery that you have ever worked in, isn't it, except that it is located on a vessel?

A. Yes.

Q. It is no different than any of these others that you have worked for, is it?

A. Well, in other words, in floating on the——

Q. Well, it is floating, but it is the same type of operation as the other canneries, is it not?

A. On, of course.

Q. In other words, as a retort man, you would do the same thing as if you were working for Libby's at Tawauk or at any of those places?

A. Oh, yes.

Q. Did you ever work for Libby's?

A. No, for Skinner & Eddy.

Q. You worked for Skinner & Eddy.

Q. Now on the day in question when Mr. Cuadra hurt his leg, what time did you go to work in the barge that day? What time did you start out?

A. We started about 8 o'clock.

Q. About 8 o'clock in the morning? And what time did he fall down and hurt his leg? [17]

A. What time?

A. Yes.

(Testimony of Luciano Vequilla.)

A. I don't remember what time it was.

Q. Would it be late in the afternoon?

A. No, not that. When he started to work, you know, when we started to piling the cases is when he met his accident at that time.

Q. Well, he had worked several hours before he fell down and hurt his leg, hadn't he?

A. Oh, about two hours, I guess.

Q. You say it happened in the morning then?

A. Yes, it was.

Q. What time in the morning?

A. We started about 8 o'clock; maybe around 9 o'clock, I guess, 9 or 10 o'clock, something like that; I couldn't say exactly.

Mr. Soriano: I don't believe he understands your question.

Mr. Merrick: I am trying to find out what time of day he hurt his leg.

Q. You started working you say about 8 o'clock in the morning?

A. Eight o'clock. Maybe about 10 o'clock. I don't remember what time is that, maybe around 10 o'clock.

Q. Could it have been 3 or 4 o'clock in the afternoon? A. Pardon me? [18]

Q. Could it have been 4 o'clock in the afternoon?

A. No.

Q. Did you work steadily all day in the barge?

A. Yes, we worked until we finished.

Q. Well, how many hours would you work, eight or ten? A. Oh, maybe 10 hours, I guess.

(Testimony of Luciano Vequilla.)

Mr. Merrick: That is all I have.

Mr. Soriano: I have just a couple of questions. Just a moment.

Redirect Examination

By Mr. Soriano:

Q. How long had you worked on this particular barge that you were loading at the time that Mr. Cuadra was injured?

A. I worked about 10 hours.

Q. On the same barge?

A. On the same barge.

Q. Now, this barge——

The Court: I didn't understand that. You say you worked 10 hours yourself, is that right?

Witness: Yes. Because Mr. Cuadra was accidentally injured, and also there were still boys working to finish. Ten hours, we worked about ten hours at that time.

Q. Now this barge, how was it brought alongside of the Alaska Queen? [19]

A. Yes. Pardon me?

Q. How was it brought alongside the Alaska Queen? A. The gas boat.

Q. The gas boat? A. Yes.

Q. A cannery tender?

A. A cannery tender, yes. The cannery tender brought it to the side of the Alaska Queen.

Q. Where were they taking the salmon?

A. When we finished loading that barge they



(Testimony of Luciano Vequilla.)

take it out of the river to the bay because the big ship is waiting for it.

Q. The ship? A. Yes.

Q. Do you know how many barges were taken in and out of there?

A. Just only one. Only one barge we bring out.

Q. Is that the only barge you loaded for the entire season?

A. Oh, well, that is the only time that I worked.

Q. That is the only one you worked on?

A. Yes.

Q. Actually the barge was afloat when it came back and forth. What was the condition around the Alaska Queen? Was she high and dry, or was she anchored, or just what was the condition of the water around the Alaska Queen? [20]

A. The water at high tide the water would be up, you know what I mean. At high tide the water go inside of the river, but still that river never dry, you know.

Q. There was ample water to bring the Alaska Queen in and also to bring barges back and forth?

A. Yes.

Q. Were the barges brought in by cannery tenders belonging to the Alaska Queen, or to the Queen Fisheries? A. Yes.

Mr. Soriano: That is all the questions I have. Thank you.

Mr. Merrick: I have no recross examination.

I would like to have this man stay in attendance, your Honor.



(Testimony of Luciano Vequilla.)

The Court: Is he under subpoena?

Mr. Poth: We will keep him, your Honor.

(Witness excused.)

Mr. Poth: I will call Mr. John E. Stewart.

**JOHN E. STEWART**

a witness called by the Plaintiff, being first duly sworn, was examined and testified as follows:

**Direct Examination**

By Mr. Poth:

Q. Will you state your name, please?

A. John E. Stewart. [21]

Q. Where do you live, sir?

A. My address is 6608 S.E. 24th, Mercer Island, Wash.

Q. And are you a licensed and practicing physician and surgeon under the laws of the State of Washington? A. Yes, I am.

Q. Do you maintain offices or a clinic in this vicinity, Doctor?

A. I maintain offices at 1012 Summit Avenue in Seattle.

Q. And during your practice, did you have occasion to see and treat Santos Cuadra, the plaintiff, in this action? A. Yes, I did.

Q. And who, if anyone, employed you, Doctor?

A. He was sent to me for treatment by the Pacific Insurance Adjusters.

Q. And what did you find? Well, when did you first see him, Doctor?

(Testimony of John E. Stewart.)

A. I first saw Mr. Cuadra on July 29, 1953.

Q. And what was his condition at that time?

A. Well, Mr. Cuadra came to me with a complaint of pain in the left knee which he had ascribed to an accident which occurred on July 20, 1953. Would you like his history as he gave it to me?

Q. Well, no.

A. Just what his condition was?

Q. Yes.

A. Examination of the left knee showed a slight increase [22] in circumference just above the patella, this being  $14\frac{3}{4}$  on the left and  $14\frac{1}{2}$  on the right. This along with the feel of the knee suggested the presence of a slight amount of fluid in the knee joint. The tenderness was localized over the femoral or upper attachment of the ligament which joins the knee joint together on this inner side, that is, the ligament which goes from the femoral condyle to the tibial condyle, and the tenderness in that locality indicated to me at that time that I was probably dealing with a strain of his medial ligament.

He had some limitation of flexion on this left side, the heel coming to within 10 inches of his buttock while on the right side it would touch his buttock. Those are my findings on his knee at that examination.

Q. And did you make any later diagnosis?

A. My diagnosis at that time was a strain of the medial collateral ligament of the left knee.

(Testimony of John E. Stewart.)

Q. Was his knee swollen or anything that you could see from the outside?

A. There was a very slight amount of swelling, as indicated by my measurements, the left knee being a quarter of an inch only greater than the right.

Q. What if anything did you do to treat him, if you did treat him at that time? [23]

A. The initial treatment consisted of felt and elastic bandage support to the knee and physical therapy in the form of heat and massage and whirlpool baths in a hydro tub.

Q. When did you next see him?

A. I saw him on August 5, 1953.

Q. Was that at your office?

A. That was at my office.

Q. What was your diagnosis at that time, if you remember?

A. My diagnosis was still a strain of the medial ligament of the left knee.

Q. Did you ever make any different diagnosis?

A. Yes, I did.

Q. What was that, Doctor?

A. It was following several months of conservative therapy during which time I had given him this belt and Ace Bandage support and given him a plaster cylinder to completely immobilize the knee which I applied on September 22 and removed on October 21st.

Q. A plaster cylinder?

A. So that was about a month, yes.

Q. What is it?

(Testimony of John E. Stewart.)

A. It is a cast to keep the knee from moving, and feeling that with this type of injury the healing would take place better with immobilization. And because of [24] continued complaint of pain I finally decided to explore the knee joint surgically.

Q. And did you make such an exploration, Doctor?

A. I made such an exploration on November 10 at the Providence Hospital.

Q. What did you find, if anything, upon your exploration?

A. At the time of exploration I found some hypertrophy or overgrowth of the pad of fatty tissue just underneath the patellar tendon. I found some fraying and yellowness of the medial meniscus, but no frank tear, such as one usually finds in any severe injury to the meniscus. The meniscus was removed in its entirety because one is unable to explore the back half of the meniscus without taking it out, and no tear was found in the back half of the meniscus. It too was yellowish in color and somewhat frayed.

Q. How did he progress after that?

A. Very slowly. He was discharged from the Providence Hospital on November 23. On November 30 there was still a small amount of fluid in his joint. On December 14 I have a note that Mr. Cuadra states that he is much better now than he was prior to his surgery, but I noted he still lacked five degrees of complete extension.

On January 12, now eight weeks post-operative,



(Testimony of John E. Stewart.)

at the present time he is walking with some limp. He [25] continued with his physical therapy treatments. On February 1, 1954, he still continued to have some pain in his knee. On February 8 because of continued complaint of pain in the knee I gave him an injection of some hydra-cortone which is an anti-inflammatory medication that we use to quiet down a reaction within the joint.

On February 15 I made a note that this patient is difficult to evaluate in that there was very little, if any, objective evidence of disability. The swelling had gone down. The measurements above the patella were the same. There was no fluid in the joint.

I have a note that he stated that he could not get along without his bandage, but I indicated I felt he was now using it as a crutch and we start going without the bandage.

A note on March 1: he stated that he was getting better, that he had no physical therapy for the past week, no swelling of the knee; on March 5, he was still complaining of pain in his knee and wanted more physical therapy but I urged him to continue on with his over-all general activity.

On March 22, he was walking without a limp and he had a full range of knee movement and but one-half inch atrophy of the left thigh. At that time I stated [26] it was my opinion that he was ready for some type of work.

On April 12, a full range of movement of his knee, no swelling. He was still complaining some-

(Testimony of John E. Stewart.)

what of pain and I noted I found it difficult to understand his complaints in view of the lack of objective evidence. I did give him a second hydra-cortone infiltration, and on April 19 he stated that he had felt better following the hydra-cortone infiltration and I urged him to find a job and to check with me in one month.

There were two more visits, one on 5-17-54, at which time he stated he got along all right during the daytime but had occasional aches at night. He had a full range of movement, and he now pointed to the outer side of the knee as to the area of discomfort.

The surgery had been on the innerside of his knee. He had no pain in the area that the surgery had been carried out. I neglected to mention that at the time of the surgery I was able to visualize the anterior or front half of the lateral side of the knee joint by retracting the patellar tendon to one side, and I could see no evidence of anything wrong with the lateral meniscus, and this was the area of which he was complaining of pain on my last visit of 5-17-54. [27]

He was advised that no further treatment was indicated and that I felt that he was capable of full duty and no further visits were planned.

He did come to me on August 12 with a form for unemployment compensation, and on examination then he had a full range of movement of the knee. His complaint was still on the lateral aspect, not over the operative area, no swelling present, no



(Testimony of John E. Stewart.)

fluid in the joint, and at the time the form was filled out I noted that I had felt that he had been ready for full-time work on 5-17-54, and part-time work as of 3-22-54.

I noted "I do not think this patient is having the pain of which he complains." At the time of surgery the anterior portion of the lateral meniscus could be viewed and nothing abnormal was found in that area.

Q. Did you take X-rays of him?

A. Yes, I did.

Q. And when did you take the last X-rays, Doctor?

A. The last—the X-rays—the only X-rays—there were two sets of X-rays, one on 7-29-53 and one on 9-8-53.

Q. There have been no X-rays taken since 9-8-53?

A. Not by me, no, sir. No. Those X-rays were within normal limits. [28]

Q. That would be September 9, 1953?

A. That is correct.

Q. What date did you operate on him?

A. I beg your pardon?

Q. What date was it that you operated on him?

A. I operated on him the month after that, 11-9-53.

Q. Does this man in your opinion have any permanent disability?

A. At the time of my last examination I recommended a disability of 15 per cent on that knee

(Testimony of John E. Stewart.)

based primarily on his subjective complaint and the fact that he was missing his medial meniscus which I believe gives some disability ordinarily.

Q. And that would be attributable to the injury that he sustained, I believe, July 20, 1953?

A. I didn't get that.

Q. That would be attributable to the injury he sustained July 20, 1953? A. Yes.

Q. While working in Alaska? A. Yes.

Mr. Poth: I have no further questions, Doctor. Thank you.

#### Cross Examination

By Mr. Merrick: [29]

Q. For the record, I think you should be qualified, Doctor. Where did you take your medical training?

A. I am a graduate of Harvard medical school and following a year of internship in the Alameda County Hospital and three years of Marine duty with the Navy, I had four years of orthopedic training at Harvard, that is, in Boston at the Massachusetts General Hospital, Peterbent Brigham, Boston Children's Hospital.

Q. Do you belong to any, are you a member of any boards?

A. Yes, I am a member of the American Board of Orthopedic Surgeons.

Q. And of any societies?

A. And of the King County Medical Society, American Medical Society, the American Board of Orthopedic Surgeons, the West Coast Orthopedic

(Testimony of John E. Stewart.)

Association, the Pacific Northwest Orthopedic Society.

Q. You specialize then in the orthopedic branch of medicine?

A. I do only orthopedic work.

Q. Now I believe you testified that you rated this man at 15 per cent permanent partial disability. Was that your testimony? A. Yes.

Q. Is that a minimum rating under the Alaska Compensation Act?

A. That is a rating which expresses a minimal disability to a knee joint. [30]

Q. And that was because, you say, of subjective symptoms and the fact that you had found it necessary to remove the cartilage?

A. That is correct.

Q. At the time of your rating there were no objective symptoms?

A. No. He had a full range of movement, no tenderness over the operative side, and no swelling of the knee joint.

Q. I gathered that you had a good result from the surgery, is that right?

A. I am sorry; I didn't get that exactly.

Q. The result from surgery was satisfactory, was it not?

A. He had no further complaints on that side of the knee where the surgery had been carried out.

Q. When he first came to you that was the only side of his knee that he was complaining about, is that right? A. That is true.

(Testimony of John E. Stewart.)

Q. And after surgery he complained about the outer side of the knee, is that right?

A. I believe it was about a month or two after the surgery that he first complained of pain on the outer side of his knee.

Q. I believe that you testified that during the surgery you had an opportunity to examine the outer side of the [31] knee and you could find nothing wrong?

A. I could see nothing wrong with it.

Q. Now initially my understanding is that you treated him conservatively, is that the word you used?

A. I treated him conservatively for quite a few months because I did not feel that during those first few months' period that he had anything that would require surgical exploration, such as a torn meniscus.

Q. In other words a knee injury can be treated conservatively or by using surgical intervention, is that right?

A. Yes, depending upon the indications that are present.

Q. For the record, what is conservative treatment?

A. Conservative treatment consists of carrying out support measures usually in the form of rest, massage, hydracortone infiltrations of the joint, all of these designed to allow nature to heal an injured area without intervention by the physician.

Q. Initially you started out by using a felt and



(Testimony of John E. Stewart.)

elastic band on his knee? A. That is correct.

Q. Was that one of those Ace bandages that you put on?

A. That is an Ace bandage that is wrapped around the knee and it immobilizes it about 50 per cent of the way.

Q. Now, you treated him conservatively then until approximately November 10 when you operated on the knee? [32]

A. That was my operative date.

Q. And I believe you testified that the meniscus which was removed was yellowed, or a yellow color?

A. Yes, it was.

Q. Is there anything significant about that?

A. It indicates degenerative changes within the meniscus. I was frankly disappointed in not finding a tear in this meniscus. It is usually in those menisci which are completely torn at the time of injury that we get our most satisfying results because we obviously remove something that has been badly damaged, but this meniscus was yellowed, which as I say, is a finding of degeneration. The margins were frayed, and there was no evidence of acute injury.

Q. Well, from the yellowness could it be that it would be an old injury?

A. Old injury, or aging, premature aging in an individual.

Q. And then you can't testify with reasonable medical certainty that this injury resulted from an accident of July 20, can you?

(Testimony of John E. Stewart.)

A. If I may qualify that, the injury to the meniscus, no, I can't testify that the changes in the meniscus were due to the injury of November 20.

Q. Or do you mean of July 20.

A. Or July 20. I did feel that the man had injured *his* [33] from my first examination.

Q. But this fraying and yellowing meniscus would indicate an old injury, degenerative. or——

A. Yes, it would. That is, one of many years' duration.

Q. Now after your surgery did you again at any time find any objective evidence of injury?

A. Well, during the immediate, post-operative period there was the usual fluid within the joint and tenderness that one finds anywhere from six to eight weeks' post-operative, and which subsided in perhaps a little longer than the usual amount of time, that is, in eight weeks rather than in four or six weeks, but other than that there were no objective signs. I believe I did mention that the thigh measurements on the left side at the time that I discharged him was one-half inch less than on the right.

Q. Could that be unusual in the normal person?

A. No, neither for a normal person than a right-handed individual usually has a larger right thigh than left and surgery alone and the period of immobilization that he had would be adequate to explain that amount of atrophy.

Q. In other words, there is nothing significant



(Testimony of John E. Stewart.)

about the one inch atrophy as far as the operation is concerned?

A. Of a half-inch atrophy, or—— [34]

Q. Yes, a half inch?

A. Half inch? No, that is not a significant amount of atrophy.

Q. Now when was the last date that you noticed any evidence of fluid in the joint?

A. February 15 I noted that there was no fluid in the joint.

Q. What is significant about that, if anything?

A. Fluid in the knee joint is a response to internal irritation, and ordinarily if there is any irritation within the knee joint, such as from a torn meniscus there will be a response in the form of generation of fluid. Therefore, if no fluid is present one can be reasonably certain that there is very little irritation within the joint.

Q. I see. Getting back to these X-rays. X-rays of the knee joint, those would only show bone damage anyway, wouldn't they?

A. They would show bone damage; if there were considerable degeneration of the articular surface of the knee joint, it would show narrowing of the joint space which was not present here and was not apparent at the time of surgery.

Q. I believe you testified that the pictures of the—in other words, they were within normal limits? [35]

A. They were within normal limits.

Q. I believe you testified that as of March 22

(Testimony of John E. Stewart.)

he was ready to go back for some type of work?

A. Yes.

Q. And you urged him to go to work, was that it?

A. Yes I did.

Q. Did he appear reluctant to look for work?

A. Yes.

Q. I believe you testified that as of May 17, 1954 in your opinion he was ready for full duty?

A. Yes.

Q. The date was 5-17-54, I believe you said?

A. Yes.

Mr. Merrick: That is all that we have.

### Redirect Examination

By Mr. Poth:

Q. Do you have your office record with you there, Doctor?

A. Yes, indeed.

Q. I wonder if I could just review it for just a minute and it might prompt me to ask some further questions.

A. Surely.

Q. I noticed that you made a notation in here on your operative procedure, "through a transverse incision over the interior, medial joint line a torn cavity was exposed." What torn cavity were you referring to, Doctor? [36]

A. The knee joint cavity. We call the area within the knee joint the joint cavity since it is enclosed by a capsular membrane.

Q. Was that torn?

A. No.

Q. No?

A. No.

Q. I notice there was erosion on the anterior

(Testimony of John E. Stewart.)

margin of the articular surface of the femur, where this had been impinging? A. Impinging.

Q. (Continuing) Upon this torn medial meniscus. What torn medial meniscus were you referring to, Doctor?

A. I think if you will read the description under the findings there that I mentioned that the anterior horn of this meniscus was frayed and with a small fragment. That is not, and I purposely left out the word "torn" because that is not the term that is——

Q. You did put "torn" in at the time that you made this? A. In the anterior horn, yes.

Q. Torn medial meniscus?

A. That is correct, yes.

Q. You did put that in when you made this report?

A. Yes, sir. I am qualifying the expression in that it does not mean the type of tear I spoke of when I [37] reviewed the record in which there has been a complete split or tear of the cartilage.

Q. Oh, yes, Doctor, what was the reasonable value of your charges?—for this service?

A. I believe my operative fee on that was \$175 which you can compare with the King County Medical Service Bureau fee of \$160.00.

Mr. Poth: Thank you very much, Doctor.

### Recross Examination

By Mr. Merrick:

Q. That was not paid by Mr. Cuadra?

(Testimony of John E. Stewart.)

A. Pardon me?

Q. Mr. Cuadra did not pay your surgical fee, did he?

A. No, that was paid by the insurance company.

Q. Under the compensation claim?

A. Yes, sir.

That is all that I have, your Honor.

The Court: You may be excused, Doctor.

(Witness excused.)

We will recess until 2:00 o'clock, p.m.

(Whereupon court was recessed until 2:00 p.m.)

(Court reconvened at 2:00 o'clock, p.m. [38])

The Court: The court will be convened.

### HOWARD W. RICKETT

a witness called by the plaintiff, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Poth:

Q. Will you state your name, please?

A. Howard W. Rickett.

Q. Where do you live, sir?

A. 4208 50th Avenue, N.E., Seattle 5, Washington.

Q. And are you a licensed and practicing physician and surgeon under the laws of the State of Washington?

A. Yes, I am.

Mr. Merrick: We will concede his qualifications.

Q. (By Mr. Poth): I would like to ask the

(Testimony of Howard W. Rickett.)

doctor his qualifications, if I may. Do you practice any particular specialty, Doctor?

A. Yes.

Q. What is that?

A. I specialize in orthopedic surgery and fractures.

Q. Do you maintain offices in this city?

A. I do.

Q. And are you by yourself or are you with other specialists? [39]

A. I am sharing office space with two other orthopedic specialists.

Q. Who are they?

A. Dr. E. M. Burgess and Dr. Roscoe Moseman.

Q. What preparation have you had for the practice of your speciality?

A. Following the usual one-year internship which I finished in 1941 I served five years as a naval officer, as a naval medical officer in the United States Navy; and three years of that time was spent in orthopedic work. The last year and one half I was chief of orthopedic surgery at the United States Naval Hospital at Bremerton, Washington. Following discharge from the service I spent two and one-half years in orthopedic residency training under the University of Washington Medical school. I was certified by the American Board of Orthopedic Surgery in 1952.

Q. And are you a member of any other societies or groups in connection with the practice of your profession, Doctor?



(Testimony of Howard W. Rickett.)

A. I am a member of the King County, State, and American Medical Associations, the Western Orthopedic Association, and the North Pacific Orthopedic Society.

Q. During the course of your practice did you have occasion to see and examine Santos Cuadra?—the plaintiff [40] in this case? A. Yes, I did.

Q. And when was the last time that you saw him?

A. The last time that I saw this patient was on May 16, 1955.

Q. That was yesterday? A. Yes, sir.

Q. Had you seen him on other occasions or on another occasion?

A. I saw him on one other occasion.

Q. When was that, Doctor?

A. That was on June 30, 1954.

Q. And when you saw him yesterday what did you find his condition to be with reference to his left knee and leg?

A. Do you mean as far as his diagnosis or do you want his physical findings?

Q. Well, you start in your own way, Doctor? Tell us all about it.

A. As far as his condition is concerned, his complaints at the time that I saw him were as follows: I have pain in my left knee and here——

Mr. Merrick: Your Honor, I am going to object to any subjective complaints. It is obvious from the preliminary examination that Doctor Rickett was not the attending physician. I think his diagnosis

(Testimony of Howard W. Rickett.)

and so forth [41] should be limited to what the objective findings were and not subjective.

The Court: Doctor, is your testimony going to be based upon the statement given you by the patient?

The Witness: Well, physical examination and X-rays are also taken into consideration, your Honor.

The Court: But the complaint he gave you is part of your foundation?

The Witness: That is necessarily a part of it in order to determine the exact points of possible injury or of difficulty.

The Court: I think the Court will have to overrule the objection.

The Witness: The patient complained of pain in his left knee and indicated over the inner and outer aspect of the knee joint, that is, on both the left and the right side of the left knee joint.

If I sit for a few minutes and get up and walk I have to stand for a while before I can start out because of the pain in my knee. Going up and down steps makes the pain worse. If I am walking on the level it doesn't bother me too much. I tried to work for two days and the knee became swollen, and also when I went to turn over in bed at night I had pain in the knee, and again he indicated exactly in the same area. [42]

The knee doesn't lock or catch. It does give way at times. I can walk several blocks and then I will take a rest for a while and I can go on in order

(Testimony of Howard W. Rickett.)

to keep the knee from hurting.

As far as his physical examination was concerned he exerted a moderate left-leg limp. It was obvious gross atrophy of the left thigh and calf muscles.

Q. Now, Doctor, I wonder if we can just stop at that point and if you could tell us what objective symptoms you saw of atrophy.

A. Well, the muscles were on gross inspection smaller on the left side, and on measuring the leg, which, incidentally, both legs are of equal length, I measured the thigh at 11 inches below a point, a fixed point on the pelvis. On the right side at this point it measured  $18\frac{1}{2}$  inches, and at the same level on the left side,  $17\frac{3}{4}$  inches, a decrease in size of  $\frac{3}{4}$  inch at that point. Measuring 13 inches below the same fixed point on the pelvis, the circumference on the right was 17 inches; on the left at the same level it was  $15\frac{7}{8}$  inches, which gives a difference of  $1\frac{1}{8}$  inches.

The measurement of the calfs taken 23 inches below the same point on the pelvis on the right measured 17 inches; on the left at the same level,  $15\frac{7}{8}$  inches. [43]

Q. That would be a difference of—

A. I beg your pardon. I misread this; pardon me. On the right it was  $15\frac{1}{4}$ ; on the left at the same level,  $14\frac{1}{4}$ , which is 1" difference.

Q. Is that within normal limits, or otherwise, Doctor?

A. No. I would say that was definitely outside the normal limit.

(Testimony of Howard W. Rickett.)

Q. What degree of atrophy, if you are able to estimate a "degree" in relation to this patient?

A. I would say anything up to  $\frac{1}{2}$  inch, between  $\frac{1}{4}$  and  $\frac{1}{2}$  inch is within normal limits. A  $\frac{1}{2}$  inch difference would be within normal limits.

Q. All right now assume that in August of 1954 the measurements had only been a half inch, what would the increase if any that you have testified to signify to you, if anything?

A. Well, I would say that there had been a gradual shrinkage of the musculature since that period of time.

Q. All right, you may proceed, Doctor, with the examination.

A. On further physical examination of the left knee there was noted the hockey thick shaped surgical incisional scar over the inner joint line on the left. This was somewhat widened but well healed. There appeared to be slight swelling of the left knee joint as compared with the right. On palpation there was tenderness [44] over the medial and lateral joint line on the left. That is on the inner and the outer side of the knee. There was no other detectable tenderness about the knee joint. There was some crepitus, or grating, beneath the knee cap. This was about equal on both sides and was not painful on either side.

I could not definitely detect any increased fluid within the knee joint. The range of motion on the left, the patient was able to flex his knee to 50 degrees, and on the right to 30 degrees, which indi-



(Testimony of Howard W. Rickett.)

cates 20 degrees limitation of motion of the left knee on flexion. There appeared to be full extension on both sides.

On the extreme of flexion the patient complained of pain over the lateral aspect of the knee joint. That is on the outer side. There was no gross relaxation of the anterior and posterior cruciate ligament on the left as compared with the right. There was questionable slight relaxation of the medial collateral ligament on the left. No pitting edema was present over the lower leg. I could detect no unusual crepitation or grating within the knee joint on repeated passive flexion and extension. But the patient did complain of pain over both sides of the joint on carrying out this particular motion. X-rays were taken then [45] which consisted of "A.P.," lateral, and notch views of both the right and the left knee, the right knee being—

Mr. Merrick: (Interposing) Will you state for the record what was the date of these X-rays?

The Witness: These X-rays were on May 16, 1955. The right knee was taken for comparison with the left knee. There was seen some sharpening of the tibial spine on both the right and left sides. The body pulled bilaterally. I could see no marked amount of arthritic change on either side as would be evidenced by overgrowth of the bone of the femoral condyle and also the tibial plateau.

The density of the bone on each side of the joint line on the left side was decreased considerably as compared to the right. There had been some im-



(Testimony of Howard W. Rickett.)

provement in this condition, however, from the views taken in the previous examination of June of 1954. There was no particular narrowing of the joint space on either side. In the inter-condylar notch of the medial femoral condyle there appeared to be some roughness of the articular margin. That completed the examination in this case.

Q. What conclusions, if any, did you draw from your examination? [46]

A. It was my opinion that the patient had some evidence of a tear of the lateral meniscus. I was also of the opinion that he had evidence of a chronic type of synovitis and early hypertrophic change of the medial femoral condyle.

Q. What is synovitis, Doctor?

A. That is inflammation of the lining of the joint.

Q. Was that present in both knees or just in one knee?

A. I found no evidence of that in the right knee.

Q. Now did you form any conclusion as to the cause of this synovitis?

A. It was my opinion that the synovitis might be well due to two conditions, (1) the original alleged injury to the medial meniscus which was subsequently removed at surgery. The injury to that meniscus, and the subsequent surgery producing a certain amount of irritation, but the major cause at the present time I felt to be on the basis of injury to the lateral meniscus, and probably a tear of the lateral meniscus.

(Testimony of Howard W. Rickett.)

Q. Doctor, what does the medical expression, "torn medial meniscus" mean?

A. To me it would mean or indicate a traumatic event causing a separation of the fibers of the medial meniscus.

Q. What is a cause of a yellowing of a meniscus? [47]

A. Well, there might be several causes of that. One, would be advancing age with degeneration. The other cause would be hemosideran deposits, which is an iron compound derived from blood, which might well have been in the knee joint as evidenced by the marked swelling which he alleges at the time of the injury, and as a result of that blood being within the joint gradually being absorbed and before it was absorbed the red corpuscles breaking down liberating hemosideran and depositing it in the cartilage, all of the cartilaginous structures actually and it was also possible to have evidence of it in the synovia of the joint, the lining.

Q. Doctor, in the absence of a trauma injury or some other outside effect is it common for one knee only to degenerate with age as distinguished from the other knee? Or would they both tend to degenerate equally in the absence of outside cause?

A. In the absence of outside cause it would be my opinion that the knees should degenerate about equally. However, it is very difficult to make any statements in that regard because there are too many factors, none of them being a major injury but numerous small injuries along the way of life,

(Testimony of Howard W. Rickett.)

so that it is difficult to pin it down to actual degeneration. [48]

Q. Do you have those X-rays with you, Doctor, that you took yesterday?      A. Yes.

Q. I wonder if you could please indicate to the court the loss of density which you have described to us, Doctor?

Mr. Merrick: Are you going to introduce those in evidence?

Mr. Poth: Yes, I had probably better introduce them.

A. This is the left knee and this is the right knee.

Mr. Poth: Will you mark these for identification please?

Mr. Merrick: Were these X-rays taken under your supervision, Doctor?

The Witness: Yes.

Q. Did you form any opinion as to the cause of the loss of density?

A. It was my opinion that that could be caused by the continued mild inflammatory process that was present within the knee joint, and also, secondly, to disuse as far as the extremity was concerned.

Mr. Merrick: As far as what was concerned?

The Witness: The extremity.

(Plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, 6 inclusive, marked for identification.) [49]

Q. Showing you what have been marked for identification as Plaintiff's Exhibits, Nos. 1, 2, 3, 4,

(Testimony of Howard W. Rickett.)

5, 6, I wonder if you please describe to the court and show to the court what you found there in regard to the condition of that knee.

The Court: Is there any objection to these exhibits?

Mr. Merrick: When were these taken?

The Witness: They were taken yesterday.

Mr. Merrick: No objection.

Mr. Poth: I will offer Plaintiff's Exhibits Nos. 1 to 6 inclusive in evidence.

The Court: Plaintiff's Exhibits Numbers 1, 2, 3, 4, 5, 6 may be admitted in evidence.

(Plaintiff's Exhibits 1 - 6 received in evidence.)

The Witness: Do we have a shadow box?

The Court: We haven't a shadow box here.

The Witness: Well, I think possibly I can show it with these lights. It makes it a little difficult, however, that is, from the standpoint of showing this up properly.

Exhibit No. 2 is an antro-posterior X-ray of Mr. Cuadra's right knee taken in my office on 5-16-55 under my direction and supervision. [50]

Plaintiff's Exhibit No. 4 is a duplicate view of Mr. Cuadra's left knee taken in my office and under my supervision on 5-16-55.

This view is a view of the left knee, which is the one in question.

This is the right knee which is the normal size and in looking at these one can see that there is considerable darkness of the bone right in this area



(Testimony of Howard W. Rickett.)

and then it becomes lighter. Also there is darkness along in this area and the bone then looks lighter in here. If we compare it with this side one does not see this mottled dark and light appearance in this area, and one does not see it particularly in the femur. The dark areas indicate that the bone is less dense at that point allowing more of the X-rays to go through and reducing more the silver substance on the film making it darker. The denser areas are the whiter points which we see which cut out more of the rays, so that this mottling dark appearance indicates softness of the bone. In other words, there is less calcium in the bone at that point.

Q. From what you found this man's condition to be were you able to determine whether or not he has been able and is now able to return to his former occupation of agricultural and cannery worker?

A. From my examination and findings it would be my opinion [51] that at this present time at least he would not be able to return to that type of work. The difficulties in the knee would preclude any return to that.

Q. What is your prognosis and recommendation, if any, as to future treatment?

A. Prognosis is very difficult on this. I would be very guarded in saying that this knee would ever return to a completely normal state and be without some degree of difficulty due to the long continuance of the symptoms and difficulties. As far as



(Testimony of Howard W. Rickett.)

treatment is concerned it is my opinion that the knee joint should be explored with the idea of removing the lateral meniscus, carrying out a long period of building up of the muscles which are now pretty well atrophied and attempting to eradicate any pathology that is found within the knee joint at the time of surgery.

Mr. Poth: I have no further questions. Thank you, Doctor.

### Cross Examination

By Mr. Merrick:

Q. Doctor, this report that you have been reading from is based solely on your examination of yesterday, is it not? A. Yes.

Q. You don't have a report on your prior examination? [52] A. Yes, I do.

Q. Well, were there any significant changes between your first report and your second report?

A. The major significant change was the increase in atrophy which he had in the muscles of that leg.

Q. May I look at your original report. Now, you first saw him when? Was it June 30, 1954?

A. I believe that is correct. You have my report there.

Q. Was he referred to you by Mr. Poth?

A. Yes, he was.

Q. And how long an examination did you make at that time? How long did it take you?

A. Well, I didn't time it exactly. Usually an

(Testimony of Howard W. Rickett.)

examination of that type takes at least an hour and possibly longer.

Q. Now generally where there has been an operation for the removal of a cartilage are there certain exercises that are prescribed to build up the muscles? A. Ordinarily, yes.

Q. This atrophy could be accounted for a failure to take those exercises, could it not?

A. Not entirely, no.

Q. Well, a great deal of it could be explained by that, if the patient failed to follow the surgeon's directions and did not take any exercise, is that correct? A. In part, yes. That is correct.

Q. Now actually outside of June 30 and yesterday those are the only two times that you have seen this man? A. That is correct.

Q. Now, I believe you testified that there is no increased fluid in the knee joint, is that correct?

A. That is correct.

Q. An increase of fluid would indicate what?

A. It would indicate two things. One, marked irritation of the lining of the joint, producing increased production of joint fluid. And in addition to that, decreased absorption of the fluid from the knee joint, so as to cause the fluid, the increased production and the decreased absorption would cause fluid to collect within the joint.

Q. In other words, an increase in fluid could be caused by irritation?

A. Yes, it could.

(Testimony of Howard W. Rickett.)

Q. And you found no increase in the fluid in the knee joint? A. No, I did not.

Q. Now, as far as the X-rays are concerned I believe you testified that there was no narrowing of the joint spaces, is that correct?

A. No, at least what I would consider, significant narrowing. [54]

Q. Now when you examined him on June 30, 1954, your report indicates that there was no tenderness to light palpation over the scar. That would be the medial side of the knee, is that right?

A. Yes, the surgical scar, that is just light palpation in order to——

Q. (Interposing) Was there a complaint of tenderness on your last examination yesterday?

A. Not on light palpation, no. In other words, the scar tissue itself was not tender.

Q. Now what were the distances of these measurements on his thigh? Do you have those on your report that is in front of you? The first of all of these measurements were taken yesterday, were they not? A. That is correct.

Q. And the first measurement of the thigh, where was that taken in relation to the distance from the pelvis? A. Eleven inches.

Q. How about the second one?

A. Thirteen inches.

Q. Now, in your report of June 30, 1954, you indicated that at the 13-inch level, the measurement for the right leg was 17½", is that correct? Do you

(Testimony of Howard W. Rickett.)

have a copy up there of the June 30, 1954, report?

A. No, I don't. You have my copy. [55]

Q. Did you make these measurements yourself?

A. Yes.

Q. On June 30 the right measured  $17\frac{1}{2}$ " and the left  $16\frac{3}{4}$ ", with a  $\frac{3}{4}$ " difference, is that correct?

A. Three-quarters inch at that time.

Q. That could be normal in an individual who had a cartilage removed and who hadn't had proper exercise, isn't that possible?

A. You can't call that normal at any time.

Q. Well, isn't there a difference in the circumference of a thigh of a person who is left-footed and one that is right-footed?

A. There might be; there might not be.

Q. It is not uncommon, is it?

A. It is not uncommon, no.

Q. That is also true of the arms and of the rest of the members of the body?

A. Yes. More so of the arms than of the lower extremities, however.

Q. You rated as permanent partial disability at 10 per cent, is that correct?

A. At that time I did, yes.

Mr. Merrick: That is all we have.

### Redirect Examination

By Mr. Poth: With respect to his left knee, was his [56] condition yesterday different than it was before when you saw him a year ago?

(Testimony of Howard W. Rickett.)

A. I would have to have my other report in order to answer that.

Q. I have the two reports here, one of June 30, 1954, and one of May 16, 1955.

The Court: What is your question, Mr. Poth?

Q. (By Mr. Poth): My question was with respect to his left knee, was his condition different yesterday when he saw him than it was when he saw him a year ago? That is, on June 30, of 1954?

A. From the standpoint of the muscular atrophy I would say that his condition was somewhat worse than it was on the previous examination. His complaints as far as pain are concerned are essentially the same. The remainder of the physical findings, I would say, were essentially the same. As I have previously indicated, there was some improvement as far as the bone density is concerned.

Mr. Poth: I have no further questions, Doctor. Thank you.

#### Recross Examination

By Mr. Merrick:

Q. Doctor, if you had a patient who had been used to doing heavy work and if he laid off, say, for two years, there [57] is a possibility that atrophy would increase in a member that had been injured, would there not?

A. I think not. Not just from the standpoint of laying off of work. It would be more or less a symmetrical thing.

Q. Well, actually your findings as to a possible tear of the lateral meniscus, that is based primarily



(Testimony of Howard W. Rickett.)

on what he told you, isn't it?

A. No, not primarily. There are certain — I mean there is the location of pain and, well, I would say the location of pain. The history of this thing giving way on him at times substantiates that to a certain extent.

Q. That is based, of course, on what he told you, though? A. That is correct, as I said.

Q. For example in your report of June 30 in your conclusions you indicate that the possible tear of the lateral meniscus, the evidence is minimal and it is based on tenderness over the lateral joint line. Now that is just what he told you, isn't it?

A. Well, yes; that was his response to pressure of the finger over the lateral joint line.

Q. And he complained of pain?

A. Of tenderness at that point, yes.

Q. Purely subjective? [58]

A. In the true sense of the word, yes.

Mr. Merrick: I have no more questions.

Redirect Examination—(Continued)

By Mr. Poth:

Q. Are you able to detect any spasms in a case like that, Doctor?—to indicate a nervous response to pain?

A. Well, there is, I mean there is a response to pain, a tendency for an individual to try to pull his leg or whatever you are examining out from beneath the finger that is producing it, and that was present in this case.

(Testimony of Howard W. Rickett.)

Mr. Poth: I have no further questions.

Recross Examination—(Continued)

By Mr. Merrick:

Q. Well, a spasm is involuntary, isn't it?

A. I was not speaking of spasm. I was referring to, as I said, the patient pulling the extremity or the part examined out from beneath the examiner's finger in order to get away from the pain which might be produced.

Q. I see. That is purely——

A. (Interposing) I was not referring to spasm per se.

Q. There was no indication of any spasm in your report of June 30, is there? A. No.

Mr. Merrick: That is all. [59]

Mr. Poth: I have no further questions. Thank you, Doctor.

The Court: That is all, Doctor. You may be excused.

The Witness: Thank you, sir.

WILLIAM C. PRICE

a witness called by the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Poth:

Q. Will you state your name, please?

A. William C. Price.

Q. Where do you live, sir?

(Testimony of William C. Price.)

A. I live at Route 4, Box 282, Kirkland, Washington.

Q. During the fishing season of 1953 would you tell us whether or not you were employed aboard the Alaska Queen in Bristol Bay, Alaska?

A. Yes, I was.

Q. And in what capacity were you aboard that ship?

A. Storekeeper. I was the storekeeper.

Q. Did you live aboard the ship?

A. Yes, I did.

Q. Did you eat aboard the ship?

A. Yes. [60]

Q. Do you know whether or not Santos Cuadra was likewise aboard that ship?

A. Yes, he was.

Q. And what were his duties, if anything, aboard her?

A. He worked on the canning of the salmon and cleaning the ship after they finished their canning, it was usually his duty. He was one of them that steam-cleaned all of the canning equipment and inside of the ship.

Q. And on the 20th day of July, 1953, where was the Alaska Queen, if you know?

A. Well, it was in the Bristol Bay area anchored up in or tied up in a slough.

Q. Was she in navigable water at that time?

A. Yes.

Q. And what was this slough; is that part of a river, or something?

A. It was the back waters from the bay.

(Testimony of William C. Price.)

Q. Was there a barge alongside the ship that day?

A. I don't remember particularly whether it was that day or not, but I know that quite often there were barges there.

Q. Well, do you remember the day that Santos Cuadra was injured? A. Yes.

Q. Was there a barge alongside of the ship that day? A. Yes, there was. [61]

Q. What was being done with the barge, if anything?

A. It was being loaded with salmon.

Q. Was that canned salmon in cases?

A. Yes.

Q. Did you have occasion to see that barge that day? A. Yes, I saw it.

Q. I wonder if you could describe this barge to us.

A. I didn't take any measurements of it, but I would say roughly it was, oh, twenty feet wide, give or take a few feet one way or the other, and maybe fifty feet long.

Q. Where was she tied, and what was she tied to?

A. She was tied alongside of the Alaska Queen.

Q. Was the barge in navigable water?

A. Yes.

Q. What sort of a flooring, if any, did she have in her?

A. Well, it had just the regular deck flooring that boats normally have.

(Testimony of William C. Price.)

Q. All right, now, was there anything placed on that deck flooring?

A. Well, they put the salmon in, but prior to that they put some kind of lumber or something to put the salmon cases on, to keep the salmon out of the water.

Q. Was there water in the bottom of the ship, of the barge?

A. I don't know whether there was in that boat at that time but I know there was danger of water getting in there. [62]

Q. Now would you please describe this wood or lumber whatever it was? Will you please describe what it was made up of and how it looked?

A. Well, it wasn't anything of any standard description. It was more or less, it wasn't the regulation, the regular pallet boards that we had been using to load them with. It was just pieces of lumber, more or less.

Q. And describe how the pieces were, and what condition they were in?

A. Well, they were fitted in as close as they could be, but not having been made for that particular purpose they wouldn't fit properly.

Q. What sizes were they, if you recall?

A. No standard size. They were various sizes, from two feet to four feet.

Q. What widths?

A. I would say various widths too.

Q. Were they secured in any way?



(Testimony of William C. Price.)

A. Not to the bottom of the boat. They weren't nailed.

Q. Did you have occasion to walk on them?

A. Yes, I walked across them several times.

Q. How was the footing?

A. Well, if you were careful and if you weren't loaded it was all right, but I wouldn't care to walk across them loaded. [63]

Q. Why was that?

A. Well, they were placed in such a way that if you stepped on them and you would lose your balance by tipping one.

Q. What do you mean by "loaded"?

A. By you yourself, if you weren't carrying something in your arms, such as these men workers were carrying; they were carrying cases, and sometimes two cases of salmon.

Q. Do you know where this wood came from that was there?

A. I don't know where it came from originally. I know prior to it being put on the barge that it was over in the warehouse that was maintained on the bank.

Q. How did it get on the barge?

A. Well, as well as I remember, the natives, I think, or some of the Eskimos that were working there carried most of it over.

Q. Where did they carry it to, the barge or the Queen?

A. They had to carry it through the Queen in order to get to the barge.

(Testimony of William C. Price.)

Q. Where did you live and eat when you were there?      A. On the Queen.

Q. Where did Mr. Santos Cuadra live and eat?

A. On the Queen.

Q. Did Mr. Cuadra do any work ashore while you were there?      A. I never saw him ashore.

Q. Did you see Mr. Cuadra get injured?

A. No, I didn't.

Q. Did you see him on that day that he was injured?      A. Yes, I did.

Q. After he had been injured?      A. Yes.

Q. What was his condition?

A. His knee had swollen quite badly and it had turned or discolored very badly.

Q. What color did it turn to?

A. A dark blue on the first day and then it developed into a yellowish, greenish color.

Q. And how big did his knee get?

A. His knee got almost as big as my head.

Q. And where was he when you first saw him after he was injured?      A. Where was he?

Q. Yes.

A. He was in his bunk on the Queen.

Q. Where was his bunk?

A. It was on the Queen.

Q. And did you have any conversation with him?

A. Yes, he told me that he had hurt his knee, and I looked at it. And what little knowledge I have of treating those things I knew or I thought that putting hot packs [65] on it would help, which I did do, put hot towels with salt water and vinegar

(Testimony of William C. Price.)

which I had heard were good for those things, and I did the best I could to treat him.

Q. How long did he remain in his bunk?

A. He remained there for quite a number of days. I don't recall exactly, but there was quite a few days he was there because every day I would bathe it several times for him and put the hot packs on it.

Q. Did he get up to go to his meals?

A. No, he couldn't get up at all.

Q. He couldn't get up?

A. No. He couldn't get up for his meals.

Q. How did he get food?

A. I don't know, whether he got any food or not.

Q. What effort did you or anyone make to get him medical care and attention?

A. I told Mr. Bendickson one time that he should go to a doctor while Mr. Bendickson was standing in the forecastle one day, and he said he was going to send him the next day to a doctor, to the hospital, but he never did.

Q. Did he send him the next day?

A. No, he did not. He said he was going to, but he didn't.

Q. Did he send anyone else to the hospital or a doctor?      A. Yes.

Q. Who was that? [66]

A. He sent me and he sent one of the deckhands; I think he sent two of the deckhands; yes, two.

Mr. Poth: I have no further questions.

(Testimony of William C. Price.)

Cross Examination

By Mr. Merrick:

Q. What is your occupation, Mr. Price?

A. I am an accountant.

Q. Where are you employed?

A. At the present time I am employed by the Robert James Construction Company.

Q. Where are they located?

A. In Bellevue, Washington.

Q. Now, was this your first experience working in the canning industry? A. Yes, sir.

Q. How did you get up to Alaska?

A. I flew.

Q. You didn't ride on the vessel at any time?

A. No.

Q. Did you come back by air? A. Yes.

Q. Now, during all of the times that you were up there and the cannery crew was there was the floating cannery tied up? A. Yes. [67]

Q. And when the Filipinos left it was still tied up, was it not? A. Yes.

Q. Now you say that these boards were the standard type of boards used in barges?

A. I would say they were not.

Q. They were not?

A. Yes, that is right.

Q. Had you ever witnessed a cannery operation in Alaska before? A. No.

Q. You say that it was dangerous to walk on these boards? A. Yes.

Q. Did everyone know that?

(Testimony of William C. Price.)

A. Mr. Bendickson should have known it; he fell down the day prior to that.

Q. I will move to strike the answer as not responsive.

The Court: The answer may be stricken.

Mr. Merrick: Will you read back the question, Mr. Reporter?

The Court: The Reporter will read the question.

(“Q. Did everyone know that”?)

A. Did “everyone”? I don’t know whether everyone knew that or not.

Q. Well, did the Filipino crew know that that were working on the barge? [68]

A. I never went around asking them if they knew it, no. I didn’t know whether they did or not.

Q. Now did Mr. Bendickson have trouble up there with you because of your drinking?

Mr. Poth: I will object.

Mr. Merrick: I think that it is proper to show bias or interest in this witness.

The Court: The objection is overruled.

A. What do you mean by “trouble”?

Q. Well, were you drunk and passed out for several days at a time while you were up there?

A. I was not passed out, no.

Q. Were you drunk on the job several times?

A. Yes.

Q. You weren’t hired back last year, were you?

A. I beg your pardon?

Q. You weren’t hired back last year, were you?

A. No.



(Testimony of William C. Price.)

Q. Now, you say that he was in his bunk for several days. What do you mean by "several days"?

A. Two or three days and more or less.

Q. And then the cannery crew all flew back to Seattle, didn't they?

A. They didn't go back with me. I saw them get on the airplane and go to Dillingham. And where they went from [69] there I don't know.

Q. Well, this was right at the end of the season, wasn't it?

A. Yes.

Q. And they all were taken out and flown directly back to Seattle, weren't they?

A. I don't know where they went to. The airplanes came to the Queen and look them to Dillingham, as far as I know; and where they went from there I don't know.

Q. Well, Mr. Cuadra left with the rest of the Filipinos, didn't he?

A. Yes.

Mr. Merrick: That is all.

Mr. Poth: I have no further questions.

(Witness Price excused.)

### VEANCIO DIEMPO

a witness called by the Plaintiff, being first duly sworn was examined and testified as follows:

#### Direct Examination

By Mr. Soriano:

Q. Will you state your full name, please?

A. Veancio Diempo.

Q. And where do you live, Mr. Diempo?

A. I live in Ketchikan, Alaska.

(Testimony of Veancio Diempo.)

Q. In Ketchikan, Alaska? A. Yes. [70]

Q. Mr. Diempo, were you employed on the Alaska Queen in the summer of 1953?

A. Yes, sir.

Q. And what was your employment or your duties on board the Alaska Queen?

A. Mr. Benediction.

Q. No, what type of work did you do?

A. General work.

Q. General work? I see. Did you have any particular job that you did or that you were hired for?

A. Yes, I go as catching cans.

Q. "Catching cans"?

A. Yes, sir. Catching the cold cans——

Q. That is catching the cans as they come off of the line?

Mr. Merrick: He is a can catcher.

Q. Okeh. And on or about July 20, 1953, did you happen to observe an accident in which Mr. Cuadra was injured? A. Yes, sir.

Q. And where were you standing at the time?

A. The place where we were working in the scow.

Q. I didn't hear you.

A. I mean in the scow, the place where there was the accident.

Q. He was on the scow? A. Yes. [71]

Q. Where were you? A. I was there.

Q. On the scow or on the ship?

A. On the scow.

(Testimony of Veancio Diempo.)

Q. On the scow. Were you close at hand so you could observe what happened?

A. Yes, I helped him.

Q. I see. Describe just how Mr. Cuadra was injured, just how he got hurt?

A. First, I saw where the stakes tip overs and hit his knee. Then he fell down and I come to him and lift him over and bring him to the side because it take us about ten minutes because he was kind of unconscious.

Q. Pardon? A. He was very——

Q. (Interposing) Unconscious?

A. (Continuing) ——unconscious in ten minutes——

Q. I see.

A. And then after, after ten minutes I bring him up to the ship and go into his bed.

Q. Now, could you describe the type of board that hit him in the leg there? A. Yes, sir.

Q. What did it look like?

A. The board was three feet long and about three feet wide. [72]

Q. I see. Was it the same as the rest of the boards on board the scow?

A. No, it was a different size. Some are short, some are long.

Q. In other words they were random, at random?

A. Yes, they were all different sizes.

Q. Now this barge that was tied up alongside of the Alaska Queen, had it been brought in? How did it get alongside of the Alaska Queen?

(Testimony of Veancio Diempo.)

A. I am sorry. I didn't get that.

Q. Pardon me?

A. Pardon me, I did not get that question.

The Court: He did not understand your question.

Q. How were these barges brought back and forth alongside the Alaska Queen?

A. We tied up along the ship.

Q. Were they brought in by tug boats?

A. Yes, they were brought in by the tug boats.

Q. By the tenders? And was there ample water for the barges and the Alaska Queen at all times in this landing or lagoon in which the Alaska Queen was anchored?

A. Yes, sir.

Q. In other words, the Alaska Queen was in navigable waters?

A. Yes.

Q. Where did you stay while you were on the Alaska Queen? [73]

A. In the ship.

Q. On the ship? And to your knowledge was Mr. Cuadra there too?

A. Yes, sir.

Q. And where did you eat?

A. On the ship.

Q. On board the vessel?

A. Yes, sir.

Q. Was the food prepared on board the vessel for you? Was the food cooked on the ship for you?

A. Yes, sir; on the ship.

Q. I see. How long have you been in the salmon industry?

A. How long have I been?

Q. How long have you worked canning salmon?

A. Oh, it was about two months in there, a couple of months in there.

Q. I didn't understand you?

(Testimony of Veancio Diempo.)

A. I mean about two months there.

The Court: Two months a year?

The Witness: Two months a year in that place.

Q. How many years have you worked?

A. Oh, do you mean including the outside work?

Q. Yes. No, no.

A. Oh, just for the Alaska Queen?

Q. No. How many years have you worked in the salmon industry up north in Alaska? [74]

A. Oh, I have been working about nine years in the fish industry.

Q. Nine years. Had you been on the Alaska Queen prior to 1953?

A. No, that is the first year I worked in that——

Q. (Interposing) That is the first year?

A. (Continuing) ——was 1953.

Q. Had you ever worked in the Bristol Bay area before? A. Yes, I worked.

Q. Where?

A. In the Alaska Packers Company.

Q. I see. Were you familiar with loading barges; when you were working with the Alaska Packers did you load barges for them?

A. No.

Q. You didn't? A. No.

Q. After Mr. Cuadra was injured did you observe his leg? Did you see his leg?

A. Yes, sir.

Q. What was the condition of it?

A. Oh, it was very swelled up. It was swelled up very, awful big.



(Testimony of Veancio Diempo.)

Q. How long had you been working on these barges alongside of the Alaska Queen?

A. Oh, I worked two months in there. [75]

Q. Had you noticed the type of dunnage or platforms they had been using on the barge, this particular barge that Mr. Cuadra was injured on?

A. Yes, sir.

Q. To your knowledge had anyone else been injured, or not injured, but had anyone else fallen because of the type of dunnage that was used, and, if so, who was it?

A. Yes. I see Mr. Benediction—fell down, almost fall down.

Q. That was on the same barge?

A. On the same barge.

Q. Was that before or after, I mean, Mr. Cuadra? A. That was just before.

Q. That was before? A. Yes.

Q. Was anything done to prevent people from being injured? A. No.

Q. Mr. Diempo, you say that you were a can handler, and you worked on board the Alaska Queen in the cannery line itself mostly. How was it that you happened to be on the barge—loading the barge?

A. Do you mean the Queen, the Alaska Queen?

Q. How was it that you happened to be going onto the barge to work? Who told you to go onto the barge? A. Oh, Mr. Benediction. [76]

Q. You went onto the barge under his directions and order? A. (No response.)

(Testimony of Veancio Diempo.)

Q. And——

Mr. Merrick: He didn't answer the question.

The Court: Do you understand the last question?

The Witness: What is the last question? Pardon me; I never got that, please.

Q. You went under his orders onto the barge to work? A. Yes, sir.

Q. And when you arrived on board the barge were there any other orders in regards to preparing the barge for loading the salmon and stowing the salmon? A. No.

Q. Well, who told you to put the dunnage on the barge? A. Mr. Benediction.

Q. I see. Did he discuss the reason for putting it there? A. Yes, sir.

Q. What was it?

A. He says, "We put all the scrap boards all over the scow."

Q. "All these scrap boards" did you say?

A. Yes, scrap boards all over the scow; so we put the boards all over the scow before we piled the cases of salmon.

Q. That was to keep the water away from the salmon, I presume? A. Yes, sir. [77]

Mr. Soriano: I have no further questions.

Mr. Poth: That is all.

### Cross Examination

By Mr. Merrick:

Q. When you worked in this barge, Mr. Diempo, you got extra pay for that, didn't you?

(Testimony of Veancio Diempo.)

A. Oh, yes; we had the extra pay.

Q. Yes. That was under your cannery workers contract?

A. Yes. It was considered overtime.

Q. Yes, it is considered overtime? In other words, you had no complaint about doing that type of work. You got extra pay for it, didn't you?

A. Yes.

Q. Now how long did you say that you have worked in canneries in Alaska?

A. Nine years now.

Q. And you have often stacked salmon when you worked in canneries, haven't you?

A. Stacked salmon? What do you mean "stacked salmon"?

Q. Stacked cases of salmon?

A. Oh, yes, pile salmon; yes—yes, sir.

Q. You always do that in a cannery?

A. Yes, we do that through piling.

Q. Now, how did you happen to get your job with Mr. Bendickson? [78]

A. Well, the inside of the cannery, the Filipino, what they call the Filipino foreman, that is the guy who hired me that I got a job at Mr. Benediction's cannery.

Q. And then you were dispatched out of the cannery workers union? A. Yes, sir.

Q. That is the A. F. of L. Union?

A. Yes, sir.

Q. And you worked under this Filipino foreman on the cannery? A. In the cannery.

(Testimony of Veancio Diempo.)

Q. Now you say that you saw Mr. Cuadra injured?      A. Yes, sir.

Q. And you say that he was hit in the leg by a board three feet long and three feet wide?

A. Yes, sir.

Q. How did that happen? Would you describe to the court just how that happened?

A. Yes, sir. First the board fly over and it hit the knee of Mr. Cuadra and then after that he fall down, and then I come and lift him over and bring him up and bring him to the side.

Q. Did Mr. Cuadra step on this board first?

A. Yes, sir.

Q. And then this board three feet wide and three feet long, or three feet square flew up and hit him in the knee, is that it? [79]      A. Yes, sir.

Q. Where did he step, in the middle of the board?      A. Right to the end.

Q. To the end? What part of his knee was struck?      A. What——?

Q. Did he strike the front part of the knee or the side or the inside?

A. That side, yes; that is the place in there, right here (indicating).

Q. You indicate that it hit him on the outside of the leg?

A. This side, on the side of his leg. (Outside right side.)

Q. Now what time of the day did this accident occur?

A. Three o'clock; a quarter past three.

(Testimony of Veancio Diempo.)

Q. A quarter past three? That is in the afternoon?  
A. Yes, in the afternoon.

Q. What time had you started to work that morning in the barge?

A. We started to work at eleven o'clock.

Q. Eleven o'clock?  
A. Yes.

Q. Wasn't it seven o'clock?

A. No, we worked first in the fish. We were canning the fish first. After we got through then we started working the scow.

Q. Well, you say you started about eleven? [80]

A. Well, I could not remember exactly. I could not tell exactly what time that we started loading the salmon.

Q. You had worked several hours before it happened, though?

A. Yes, we worked several hours before it happened, yes.

Q. Now you say you ate on the ship?

A. Yes, we ate on the ship.

Q. There was no place to eat on the beach, was there?  
A. No, none.

Q. Now when you were working in the cannery line you also worked with several of the natives that worked in the cannery, didn't you?

A. No.

Q. You worked with some of the residents, didn't you, the natives?

A. No, we was under the ship, we worked on the ship not on another place.



(Testimony of Veancio Diempo.)

Q. No, but I mean the natives also worked with you canning fish, don't they?

A. No, the natives didn't work canning fish. They worked in the warehouse.

Q. And they also worked in the barge?

A. I don't know if the natives were working in the barge in there.

Q. Now the Filipinos are considered nonresident cannery workers, weren't they? A. Yes, sir.

Mr. Poth: I will object to that question.

Q. Well, do you know what "nonresident" means? A. Yes, I know.

Q. Those are the Filipinos that come up from Seattle? A. Yes.

Q. And also the resident cannery workers, the Indians, they also work with you fellows canning fish, don't they? A. Yes, sir.

Q. They work right with you in the cannery line, don't they? A. Yes.

Q. And they also work with you doing work like stacking salmon in the barge, don't they?

A. Oh, I don't know. I could not tell exactly if they work with us during loading salmon.

The Court: What was that answer? Did they or didn't they? Do you recall?

The Witness: Oh, I should say they work with us.

Q. You all work together up there when you are up there? A. Yes.

Q. How many people were working in the barge this day that Mr. Cuadra was injured?

(Testimony of Veancio Diempo.)

A. In the barge?

Q. Yes.

A. Well, about eight or nine, I think—nine.

Q. How many Indians or natives were working with you at that time—if you know? [82]

A. Well, there was about one, I think, one; but I could not tell exactly how many; one—one for sure.

Q. They were changed sometimes. Sometimes there would be more and sometimes less, is that right?

A. Yes.

Q. Did you work with Mr. Cuadra last year? In 1954?

A. No, I don't work.

Q. You didn't work at all?

A. No, I don't work with him, with Mr. Cuadra last year.

Q. Do you know where he worked last year?

A. Yes, I worked last year.

Q. Where did Mr. Cuadra work last year?

A. I don't know.

Q. Do you know if he worked?

A. No, I don't know where he worked. I stayed in Ketchikan. That is my resident town, Ketchikan, Alaska.

Q. You worked up in Ketchikan last year?

A. Yes.

Q. Do you know where Mr. Cuadra worked last year?

A. No.

Q. Do you know if he worked?

A. No.

Q. You don't know if he worked?

A. I don't know.

(Testimony of Veancio Diempo.)

Q. Do you know if he worked last winter? [83]

A. No.

Q. You don't know. You haven't seen him then since 1953? A. No.

Q. (Continuing) ——I gather?

A. That is only in 1953 that we worked together.

Mr. Merrick: That is all.

Mr. Soriano: Just one question is all.

### Redirect Examination

By Mr. Soriano:

Q. Could you tell me, Mr. Diempo, did the natives in the Bristol Bay area sleep on board the vessel with the crew members? A. No.

Q. I see. Did they eat on board the vessel—with the crew members? A. Yes, they eat.

Q. They ate sometimes? A. Yes.

Q. But they didn't stay on the vessel?

A. No.

Q. They had their own quarters ashore?

A. Yes, sir.

Mr. Soriano: That is all.

### Recross Examination

By Mr. Merrick:

Q. Well, there were no rooms for the natives to sleep on the [84] vessel, were there? A. No.

Q. There was no room for them?

A. No room for the natives.

Q. And some of them are married and have their families right there in the Bristol Bay area, don't they?

(Testimony of Veancio Diempo.)

A. Oh, I don't know if some of them are married.

Mr. Merrick: That is all.

The Court: That is all. You may be excused.

(Witness excused.)

We will take a recess at this time.

(15 minute recess.)

The Court: The court will come to order. You may proceed.

Mr. Poth: I would like to call Mr. Erling H. Bendiksen as an adverse witness at this time, if your Honor please, he being the party-defendant.

### ERLING H. BENDIKSEN

a witness called by the plaintiff as an adverse witness, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Poth:

Q. Will you state your name, please?

A. Erling H. Bendiksen. [85]

Q. Where do you live, sir?

A. Oh, I live part of the time in Seattle and part of the time in Pacific County.

Q. What is your home residence?

A. Well, my home residence is Ocean Park at Pacific County.

Q. You are one of the defendants named in this action?

A. Yes.

Q. You were operating the Alaska Queen in 1953?

A. Yes.

(Testimony of Erling H. Bendiksen.)

Q. Where did she spend the winter of 1952 and 1953? A. Where did I spend the winter?

Q. Where did the ship spend the winter?

A. Oh, here in Seattle.

Q. Whereabouts? Was that in Lake Union?

A. Yes, I think so.

Q. Whereabouts in Lake Union?

A. Well, if it was in Lake Union it was tied up at St. Vincent De Paul down here.

Q. At the St. Vincent De Paul Dock?

A. Yes.

Q. Did you rent moorage from the St. Vincent De Paul? A. Yes.

Q. How did the Alaska Queen get to Alaska? Did she go under her own power or was she towed?

A. Under her own power. [86]

Q. And what type of a vessel is the Alaska Queen?

A. Oh, it is sort of a barge-type shape, you know, but it is self-propelled with twin screws.

Q. Is she a converted L.S.T.? A. No.

Q. What was she before she was the Alaska Queen?

A. Well, that was before I got it. It was equipped as a boat when I got it and it was self-propelled.

Q. She was a what?

A. Well, I bought it as she is now at the time pretty much. We done some work on it, but it is a steel boat, like I say, kind of barge-shaped.

Q. What is her tonnage?



(Testimony of Erling H. Bendiksen.)

A. About 297 tons.

Q. Gross displacement, or what tonnage are you talking about?

A. I am talking about net tonnage.

Q. Net tonnage? A. Yes.

Q. What type of engines does she have aboard her? A. General Motors.

Q. Is that steam, or diesel, or what?

A. Diesel.

Q. And does she have any cargo carrying capacity? A. Yes.

Q. Does she have a hold aboard her?

A. Yes. [87]

Q. More than one?

A. Oh, yes. She has three cargo holds. And the rest of it is taken up with cannery machinery, and other machinery.

Q. Does she have decks on her? A. Yes.

Q. How many decks? A. Well, two decks.

Q. Do you have a weather deck?

A. Well, you might call the ship's, you might call it the "between" deck and then the "top" deck.

Q. And do you have crew's quarters aboard her? Did you have crew's quarters aboard her in 1953?

A. Yes.

Q. Did you employ Santos Cuadra for the 1953 fishing season? Santos Cuadra, the Plaintiff in this action?

A. Yes, he was employed as a cannery worker.

Q. When did you first put him aboard?

(Testimony of Erling H. Bendiksen.)

A. After the ship got up there we fly our cannery help up direct from here.

Q. Did you have him work on the ship here in Lake Union before he went up north?

A. I don't know. That would be a separate deal if he did. He might have. Sometime we do pick up extra help to do a little work.

Q. Now this barge that he was injured on, that also belonged [88] to you?      A. Yes.

Q. What was the purpose of that barge?

A. Well, it was a regular standard barge used for transferring salmon from our place there to the ship, to the Alaska Queen, which is tied up, which is anchored in the main river. We were tied up in a more or less you might call it slough, up in from the main river where the ships would go.

Q. Is that navigable water, that slough?

A. Well, you might call it "navigable water," anything that boats can go up and down, I guess you would consider it.

Q. And did Santos Cuadra live aboard that ship while he was in your employ during the season of 1953?

A. Yes. We have one room on board we keep the Filipinos in and the cannery workers, and the rest of the cannery workers have stayed in shore, and that is all the cannery workers that live on board.

Q. Did you bring back any salmon aboard that ship, any canned salmon when you came south for the winter after the 1953 season?

(Testimony of Erling H. Bendiksen.)

A. Oh, yes; I expect we did.

Q. How many cases did you bring back?

A. I couldn't tell you unless I looked it up. I would have to look it up. [89]

Q. Were you loaded to capacity?

A. Yes, probably.

Q. And how many cases did that ship hold at that time when it was loaded to capacity?

A. Well, you ask me a question here. You see, we store our cans on board the ship for canning, and if you don't use up all of the cans we will have them left over and they will be part of the cargo, and the rest of the space we will load salmon on when we are ready to go south.

Q. Well, did you use up all of your cans in the 1953 pack?

A. Well, I don't remember. I think there were probably some cans left. There usually is.

Q. How many cases, approximately, of cans and tops, of flats and tops?

A. Oh, we probably had 10,000 left.

Q. Ten thousand cases?

A. Ten thousand cases, yes.

Q. Ten thousand cases of cans and tops?

A. Left, yes. I think that we canned about 40,000 cases and we probably had about 10,000 cases left over before we got through up there.

Q. You are not referring to square cases?

A. Well, I am referring to cases. Now I am talking about cases here, I am talking about cans enough for 10,000 cases. [90]

(Testimony of Erling H. Bendiksen.)

Q. Oh, yes. But not cases of knocked down cans?

A. No. You see, in that district or in practically all of Alaska all cans, empties, are shipped collapsed to Alaska, which is the only place they are shipped that way.

Q. But you did transport canned salmon back to Seattle aboard that ship?

A. There was some canned salmon and also some cans.

Q. Now, on the twentieth day of July, 1953, were you aboard the ship? That was the day that has been testified that Santos Cuadra was injured. Were you aboard the *Queen*?

A. Well, I probably was at the place. We managed to look after the tenders and the fish boats, and I expect I was there, at the time we loaded the salmon.

Q. Do you remember Mr. Cuadra being injured?

A. I remember he was hurt on the barge, but at the time——

Q. Did you see him that day he was hurt?

A. I think so. I think I probably did.

Q. Where was he when you saw him?

A. Well, I don't remember that.

Q. Now you were the general superintendent of all operations up there, weren't you?

A. Yes, pretty much.

Q. You ran the "show," in other words?

A. Well, you might say, yes. [91]

Q. You were, that is, to put it briefly, you were the "boss"? Is that right?



(Testimony of Erling H. Bendiksen.)

A. Well, to some extent. It works this way. When we are up there I am pretty much the boss, but as far as the ship goes I have nothing to do with the ship. They have a captain in charge of the ship, the ship's crew, but so far as the cannery and the management of the fish, I was in charge of that, of the canned salmon.

Q. Were you in charge of the loading of the barge? A. Yes, that was my responsibility.

Q. Now did you order Mr. Cuadra on that day that he was injured to load salmon, canned salmon on that barge?

A. I expect I probably told the Filipino foreman to get some help. That is common that the cannery workers sometimes help at longshore work. It is right in the agreement; we can call on them for longshore work.

Q. Did you supervise the loading of the barge?

A. Oh, to some extent. I probably didn't stay there all of the time, you know.

Q. But you were back and forth?

A. It isn't necessary. It is very common work. It is just very plain, common labor.

Q. Now did you order the men to dunnage off the barge before putting the salmon in?

A. I expect I did. It is a very common practice. [92]

Q. All right. Now what did you use for dunnage there that time?

A. Oh, we used some boards laid on top of the deck.



(Testimony of Erling H. Bendiksen.)

Q. What were these boards like? Would you describe them to us?

A. Well, they were, offhand it is hard to say. I think they were one-inch boards mainly. .

Q. One-inch boards? A. Yes.

Q. What sizes and shapes were they in?

A. Well, I think they were, they were probably various sizes in this particular case. I couldn't remember that.

Q. Now did you tell the men to lay those boards out over the floor of the barge?

A. Yes, I probably did.

Q. Now did you have the men lay stringers or cross pieces first and then lay the boards across the other way on top of them, is that what you did?

A. I don't think that we had any cross boards. I think there was only one layer of boards. That is the way it was done.

Q. Well, isn't that the customary practice in order to provide space in case water gets in to lay stripping first and then lay your dunnage over that? Isn't that the way it always works? [93]

A. No, not exactly. The ships, they use dunnage. It is very common. All ships use dunnage, and they use in many cases only single dunnage.

Q. But you don't remember whether you told them to put cross pieces there that day?

A. I don't remember. No, I don't.

Q. Do you remember falling down in the barge there on that—— A. Myself.

Q. Yes.

(Testimony of Erling H. Bendiksen.)

A. No, I don't remember that either, but——

Q. Would you say it didn't happen?

A. I don't say it didn't happen, but I say I don't remember it. It is two years ago almost now, and I don't remember if sometimes a person would——

Q. Now where did you get this wood that was used to floor off the skin of the barge there?

A. I think we probably got it from shore because the barge was used for fish.

Q. Well, how did it get up north?

A. Oh, we probably brought it up with our own equipment.

Q. You brought it up. And do you remember where you got it from when you were in Seattle?

A. No, I don't exactly remember.

Q. Did you order the men to pick it off of the dock at the Goodwill?

A. Off of the dock? What dock are you referring to? [94]

Q. The Goodwill Pier here in Seattle?

A. No.

Q. Do you remember being at the Goodwill Pier—pardon me, at St. Vincent de Paul, at St. Vincent de Paul Pier; do you remember that?

A. Well, we have a station in shore in which we have lumber up there right now, I mean, from year to year.

Q. Where is that?

A. In Bristol Bay, where we have our equipment.

(Testimony of Erling H. Bendiksen.)

Q. All right. Do you remember this particular year, 1953, when the ship was tied up at the Lake Union dock of the St. Vincent de Paul before you went north? Do you remember being there and telling the men at that time to go out and pick up this scrap lumber lying on the Goodwill dock, pardon me, on the St. Vincent de Paul dock?

A. I think I bought some lumber from St. Vincent de Paul, but I bought it and paid for it. I don't think, I don't know whether you would call it "scrap" lumber or not. You can call scrap lumber almost anything, I mean, as far as that goes. Ships have, all ships have dunnage, you know. They don't use first-class lumber for it. That is true.

Q. Have you ever used pallet boards in your barges to floor off with? A. No. [95]

Q. You have been to other canneries, have you not, in Bristol Bay and watched their operation?

A. Yes.

Q. What is a pallet board?

A. A pallet board is used in warehouses for lift trucks. It is referred to as a pallet board.

Q. They have them up there at Bristol Bay, do they not?

A. Yes. But they are not used on barges.

Q. Will you describe what they are like?

A. Yes, a pallet board is made from first boards on the bottom and then 2x4's, three 2x4's, and then boards on top. That is what they call a pallet board.

Q. Isn't it a customary practice to lay that type

(Testimony of Erling H. Bendiksen.)

of flooring in barges to protect against possible dampness to the cases?—that are being stowed?

A. No.

Q. You never saw that done?

A. I never saw pallet boards but they used other grating; what we refer to in Bristol Bay as grating.

Q. Grating? A. Yes.

Q. Would you describe a grating?

A. We have them on our barges, too.

Q. What is a grating?

A. A grating is something like you might call it, not like [96] pallet boards. But a grating is made out of first cross pieces and then 2x6's or 2x8's nailed on top of them, you see, into squares about, oh, they might be 6x6 or 8x8.

Q. How deep are these?

A. Oh, they would be, maybe,—

Q. (Interposing) —Six inches?

A. Four inches deep.

Q. Four inches deep.

A. Two inches and then two inches on top.

Q. How square are they?

A. Oh, they will vary in size. It depends. There will be no fixed size. They would vary from 6x6 to 4x6 and 4x8.

Q. Are they heavy?

A. Yes, reasonably heavy. I can show you some. I got some right here in Lake Union.

Q. Well, that is customary then to use those gratings in the barges?

A. It is customary, yes; but it is customary



(Testimony of Erling H. Bendiksen.)

to use planks too; I mean, that depends. So long as you protect the cargo from dampness, that is the main thing which I do.

Q. The main thing is to protect the cargo, is that it?

A. Well, it is put on there to protect the cargo. If you are referring to something else here regarding anybody [97] getting hurt; I don't think that it is our practice to hurt anybody. We hire people——

Q. (Interposing) But on this particular barge——  
Mr. Merrick: He didn't finish.

Mr. Poth: Excuse me; had you finished?

A. Yes, go ahead.

Q. But on this particular barge you used this scrap lumber for flooring to protect the cargo, is that correct?

A. Well, I want to find out what you consider "scrap" lumber. I don't know how to answer that. What do you mean by "scrap" lumber?

Q. You didn't use gratings, and you didn't use pallet boards?

A. Well, what would you call "scrap" lumber? I want to know that. I don't know how to answer.

Q. You described, I believe, this lumber as being of odd lengths, two feet, three feet, and different widths, and you stated that you believed you ordered the men to cover the entire floor of the barge with lumber of that type rather than gratings which you testified you customarily used.

A. Well, grating on barges could be called



(Testimony of Erling H. Bendiksen.)

"scrap" too. It depends on what shape it is in. I mean, you can't just call something scrap. I mean you can buy "scrap" lumber planks, you know. They call scrap lumber 2x6's and 2x8's. [98]

Q. But this was not regular flooring? It was of random lengths and sizes, was it not?

A. Well, they were platforms, is what they were. Instead of being 8x8, they might have been 4x4's and 3x3's. No difference from the pallet boards. The smallest pallet board used here in the city is probably 32"x40".

Q. Didn't you testify——

A. That is the regular standard——

Q. Excuse me; had you finished?

A. Go ahead.

Q. You had testified that these were of different lengths and sizes, one inch in thickness. Is it your testimony now that some of them were three inches and four inches in thickness? A. No.

Q. They were all one inch?

A. If you are referring to some platforms I bought from St. Vincent de Paul, I couldn't tell you exactly to the inch what the sizes are, but I would say they were something like 30"x30"; maybe some of them were 30" by 24".

Q. By "platforms" do you mean one piece of lumber or something that has been constructed and built together?

A. Something that has been constructed. I think they were hardwood platforms.

Q. Would you describe these platforms? [99]

(Testimony of Erling H. Bendiksen.)

A. Well, they were nailed just the same as a grating except for they were a little smaller than the large grating. I mean, you can call them a grating as well as a platform.

Q. And you had the men scatter these all over, is that right?

A. Well, why we laid them out is to protect the salmon from dampness seeping in from the outside.

Q. How much did they weigh, these ones that you had there on July 20th?

A. Oh, these platforms would weigh probably; oh, I don't know. That would be hard to say off hand in pounds; maybe 20 pounds, maybe fifteen pounds. I really don't know what to say.

Mr. Merrick: It might clear it up. You have more barges than one. That may be the confusion; I don't know if there is a meeting of the minds as to what you are talking about. He has got a large barge and small barges.

The Court: We are thinking about the barge that was tied up in the river.

Mr. Merrick: The barge has never been identified as to where this man was injured. That is the problem.

Q. (By Mr. Poth): Well, what was the barge that Mr. Cuadra was injured on?

A. I think the barge that you are referring to here must [100] have been a barge something like 22 feet by 60 feet.

Q. 22x60?      A. By 60 feet.

(Testimony of Erling H. Bendiksen.)

Q. That that have any motive power of its own?

A. No.

Q. Is that a steel barge?

A. A wooden barge.

Q. And what was the flooring of that barge made out of?

A. Oh, probably about 4x8's.

Q. Was it smooth wood? A. Yes.

Q. Easy to walk on? A. Yes.

Q. And then you ordered the men that day to cover that whole flooring of that barge with these platforms or lumber or whatever you want to call it, is that right?

A. Well, I don't know if we covered the whole thing first before we started loading. We might have covered a section of it and then filled that up and then covered some more.

Q. You don't remember?

A. No, I don't remember how that was done, whether the whole deck was covered or not.

Q. Now these regular gratings, if you step on them will they tip?—the regular gratings that you use? [101]

A. Oh, the regular grating, that would depend. Are you referring to large grating?

Q. Yes, the regular large gratings. If you step on the edge of one of them, will they tip and fly up?

A. No. If all of the boards are nailed down, they shouldn't do it.

Q. The whole grating won't tip up?

A. No. I don't see why they should.

(Testimony of Erling H. Bendiksen.)

Q. Now these little three-foot platforms that you are talking about that you may have gotten from St. Vincent de Paul and which may also have been lumber of some kind or wood of some sort of random lengths and sizes——

A. Yes.

Q. ——that were on that barge on the twentieth day of July, 1953——

A. Yes.

Q. ——could those tip up if you stepped on them the wrong way?

A. Oh, it is possible they could.

Q. Did one tip up with you that day?—and cause you to fall down?

A. I don't—like I said, I don't remember.

Q. You don't remember?

A. I know I wasn't hurt by any means, if one did.

Q. But the fact is that on that barge on that day you did [102] not have your regular heavy gratings that you used?

A. Well, what do you mean “that I used”? I mean, there is no fixed——

Q. (Interposing) That you customarily used?

A. There is no fixed ruling for what you use on the deck.

Q. Well, I believe you testified that ordinarily you used these heavy wooden gratings?

A. Well, I say they will vary in size.

Q. Yes.

A. The main thing is to protect the cargo from the deck.

(Testimony of Erling H. Bendiksen.)

Q. Yes, but that is the ordinary thing to have heavy wooden gratings? A. Well——

Q. Isn't that the ordinary thing?

A. They would——

Q. Isn't that what those heavy wooden gratings are made for?

A. Well, they make them into squares——

Q. (Continuing) ——To fit over——

A. (Continuing) ——so they can be handled off and on.

Q. Yes. A. But the size was——

Q. But those were not being used on that particular barge that Santos Cuadra was injured, were they?

A. Well, if we were using small ones, I guess we were not using big ones; that is true. [103]

Q. Now you say you bought some platforms from St. Vincent de Paul, small platforms, is that right, three or four foot square, is that right?

A. That is right, something a little smaller than a pallet board possibly.

Q. Did St. Vincent de Paul make those up especially for you or was it something they had there?

A. It was something they had there. They were not made especially.

Q. What had they originally been made for?

A. They were brand new. They had never been used. Well, they had been used for something, but——

Q. You don't know what they had been used for?

A. I don't know whether they come from a can



(Testimony of Erling H. Bendiksen.)

company or some company. They were a shipping frame, I think; steel companies, or something in the East.

Q. In other words, they weren't something that had been manufactured and made as a flooring for barges?

A. No. That is true. I don't think they were.

Q. In other words, and they also had not been fashioned and made for people to walk on, is that right?

A. Well, that would all depend. They were not made especially for that job, that is true.

Mr. Poth: I have no further questions.

Mr. Merrick: I will call Mr. Bendiksen later as part of our case. [104]

The Court: That is all. You may be excused at this time, sir.

(Witness excused.)

Mr. Poth: Oh, pardon me; one more question. Did you employ William C. Price after the season, after the return from Alaska?

Mr. Bendiksen: Well, I didn't employ him. He was still on more or less you might call it the payroll.

Mr. Poth: He worked for you. He was on your payroll and worked for you back here in Seattle?

Mr. Bendiksen: That is right. Well, he didn't work for us in Seattle. The only way, he was cleaning up some work that he did or that he was supposed to do up there.

Mr. Poth: He was on the payroll and you paid him. Didn't he work for you two months?

Mr. Bendiksen: All together, do you mean, the whole summer?

Mr. Poth: After he got back here?

Mr. Bendiksen: No.

Mr. Poth: How long did he work for you back here?

Mr. Bendiksen: Oh, he might have worked for two or three weeks maybe, I don't know.

Mr. Poth: In other words, you didn't fire him when he got back from Alaska? [105]

Mr. Bendiksen: Well, he done some work that he had information on. He was supposed to be a timekeeper and do some storekeeper work, but he was not too satisfactory. Is that all?

The Court: Are you through, Mr. Poth?

Mr. Poth: Yes, sir.

Mr. Poth: I will call Mr. Santos Cuadra at this time.

### SANTOS CUADRA

a witness called in his own behalf, was first duly sworn, and then was examined and testified as follows:

#### Direct Examination

By Mr. Poth:

Q. Will you state your name, please?

A. Santos Cuadra.

Q. And where do you live, sir?

A. 118 Fourth Avenue South in Seattle, Washington.

Q. Did you ever have any trouble with your

(Testimony of Santos Cuadra.)

knee prior to July 20, 1953? Did your knee ever hurt you?

A. Oh, last year it got hurt, banged my knee.

Q. I mean before you got it hurt in 1953, did you have any trouble with your knee?

A. No. [106]

Q. What kind of work have you been doing all of your life?      A. General work.

Q. What type of work?

A. Oh, work for the painting.

Q. For who?      A. Painting.

Q. Were you an agricultural worker? Did you work on the farms?

A. I work in the farm too and I work for the ship, the Army Transport; I drive a tractor and I drive a truck, and hand butcher; and any kind of job here in Seattle I work there.

Q. Have you been able to work since you got hurt in 1953?

A. Since that time there was accident I never been work. Last year I worked for two hours or two days. That is all.

Q. Why didn't you work?

A. Because the doctor just told me to look for job to exercise your knee. So I worked for two days, and then I quit because she is bothering me; my knee swelled up.

Q. Did it swell up?

A. It swelled up there at that time.

Q. Did it hurt you?

A. Sure, it hurt then.

(Testimony of Santos Cuadra.)

Q. Does your knee hurt you now? [107]

A. Sure, it hurt my knee; I cannot stand very good.

Q. Tell us what trouble you are having with your knee right now.

A. My knee is troubled, here is the operation, and back here it is now.

Q. Are you able to work now?

A. I look for a job, but I tried for two hours, for one hour and one-half again, and this bothers me; why, there is a pain in my knee all of the time. And maybe I walk; two blocks I take a rest. Maybe I sit down, and I can't take a walk right away. I have a cigarette and go and walk, you see.

Q. How much were you making a year before you got hurt?      A. Oh, in 1953?

Q. No, I mean, how much did you average a year before you got hurt?

A. Oh, last year I got two days I worked; that is all.

Q. No, I mean before you got hurt?

A. I don't know how much then I got before.

Q. How much did you make in 1952?

A. I forgot how much I make then. I think I have got something in my bill, an income tax bill here; I don't know that.

Q. Was it around \$3000.00? Do you understand me?

A. I think in 1952 it was around \$3000.00. [108]

Mr. Merrick: I want to start objecting now if you are going to start leading the witness.

(Testimony of Santos Cuadra.)

Mr. Poth: I have an interpreter here that I could call up that speaks very good English, and Mr. Soriano also speaks Spanish, your Honor.

The Court: Well, we will get along without an interpreter if we can. If we can't, why, we can use one.

Q. (By Mr. Poth) I might stipulate on that to save a little time. If I could, perhaps we can stipulate that for the calendar year, 1953, he paid income tax on \$2898.95. No, that was for 1952, I am sorry. He paid it in 1953.

Mr. Merrick: May I see that a minute?

Mr. Poth: In 1953, \$1413.13. That was the year in which he was injured.

The Court: Will you stipulate that that was the Plaintiff's income for 1952, that is, from work, that is compensation paid, \$2898.95 in 1952? And compensation paid for 1953, up to what date? That was paid during the period of this time. After July?

Mr. Poth: There is no record, there are no earnings after July of that year when he was injured. Of course, I believe he was guaranteed two months' salary up there, so he got his two months' salary.

The Court: So his compensation in 1953 was \$1413.13 including two months' compensation in Alaska. [109]

Which was the whole time. May I ask, was that the amount of compensation received by others similarly employed?

Mr. Poth: Yes.



(Testimony of Santos Cuadra.)

The Court: So there is no time lost up there?

Mr. Poth: No.

Mr. Merrick: There is nothing in 1953, is there? The only employer who shows in 1953 is Queen Fisheries?

Mr. Poth: That is right.

Mr. Merrick: Two months. He didn't go to work until June of 1953.

The Court: All right. The stipulation will show.

Q. (By Mr. Poth): Now on the day that you were injured on July 20, 1953, did anybody tell you to go to work on a barge?

A. Mr. Bendiksen.

Q. Mr. Bendiksen, who is sitting in the courtroom here?

A. Mr. Bendiksen, yes. He is the boss over us.

Q. He was the boss?

A. He was the boss for the work on the barge before loading the salmon.

Q. And did you go down on the barge?

A. Everybody did go down on the barge, except the rope and everything for loading salmon.

Q. And, did he or did he not tell you to cover the deck of the barge? [110]

A. Mr. Bendiksen.

Q. Mr. Bendiksen did? A. Yes.

Q. What did he tell you to cover it with?

A. With the *fence* for the water so it don't ship the first deck of cases; it get no water at all.

Q. And what if anything did he give you to put down there? A. A canvas there.

(Testimony of Santos Cuadra.)

Q. What?

A. Put the canvas, I mean, on the floor?

Q. Yes.

A. That boards not secured and besides not square; some big and some short ones.

Q. Where did these boards come from?

A. Oh, that boards come from St. Vincent's dock over there. I know because I worked for one month over there on that Alaska Queen to paint over there, you see, before loading that boat over there.

Q. They came from St. Vincent de Paul's dock?

A. Yes, the dock over there on Union Lake.

Q. And who took them off of there?

A. Well, Mr. Bendiksen just tell the Filipino foreman in the afternoon; so everybody were loading to inside the Alaska Queen. And next day, the next morning, I come back, I heard that somebody remarked, "Why did you [111] load these boards inside of the Alaska Queen"? You see.

Q. What were these boards like?

A. Well, they look like long lengths this one and some four feet and some three feet, you see, that board over there, already inside of the Alaska Queen.

Q. Did he have you cover the whole floor of the barge with it?

A. Well, at the time in loading that salmon, the cases of salmon for the barge, at the top it is covered up because defense for the water there, you see?

(Testimony of Santos Cuadra.)

Q. Right.

A. Ship the first cases over there, or the cans.

Q. All right, did he tell you to cover the floor of the barge with them?

A. Mr. Bendiksen.

Q. Did he tell you to just cover parts or did he tell you to cover all of it?

A. (No response.)

Q. How was the walking on it?

A. Pardon me, walking?

Q. Yes, how did you walk on it?

A. On the scow?

Q. Yes. How were you able to walk? Was it good walking? A. Oh, no.

Q. Or bad? [112]

A. At the time about an hour and one-half of longshore over there, I mean, in loading the salmon, Mr. Bendiksen, I saw him just fall down on that board over there. So after that Mr. Bendiksen go up the Alaska Queen on top of the deck, you see; and everybody work loading salmon.

Q. Did you have any trouble walking?

A. Oh, well, at that time I never had no trouble yet, but the boards not secure over there.

Q. What was wrong with them?

A. They was crooked, not even.

Q. Now tell me, were any cross pieces laid first?

A. No; that board just piled up like that. The first time in loading that salmon, the cases of salmon, I put, I start to loading, I put side by side, I mean, in the corner.

(Testimony of Santos Cuadra.)

Q. Yes.

A. So Mr. Bendiksen just come down in the scow: "No, no, don't put like that. Put everything boards on, put boards in the front of the scow."

Q. All over?

A. All over, you see.

Q. Instead of doing it tier by tier?

A. Yes, that is right.

Q. He wanted you to put it all over?

A. That is right, because I don't like to hurt them—— [113]

Q. What was that?

A. But Mr. Bendiksen just come down in the scow, "Don't put the boards like that; put boards everything inside the scow around the scow."

Q. Cover everything?

A. Cover the boards in the scow everything. But I see Mr. Bendiksen just fall down after the covered wood and everything in the scow, so that time after that Mr. Bendiksen go up on the deck of the Alaska Queen, and then everybody loading salmon.

Q. All right, now. Did you get hurt that day?

A. I think after three o'clock. I come back, you know, for coffee time, and at that time I have accident.

Q. How did the accident happen? You tell us now in your own words?

A. I pick up the one case of salmon to pile up; so I throw, I missed the board to put on my knee, I mean, my foot, I missing, and, you know, this

(Testimony of Santos Cuadra.)

corner here in the middle, so I missed this one, and so I throwed that cases, that board went turned over and hit my knee here, and then I fall down.

Q. I see.

A. And then somebody help me to pick up and bring me to that side here, about ten minutes. So I saw Mr. Bendiksen over there on the deck on the Alaska Queen; about [114] ten minutes somebody help me bring me to my bed over there. After that I never, no more, because it swelled up here, my knee.

Q. Did it swell bad?

A. It swelled up bad here. I told them, the foreman, the Filipino foreman, tell to Mr. Bendiksen, "bring me to hospital because very badly on my knee." He answered to me, "Tomorrow." He said, "Santos, tomorrow; Mr. Bendiksen take you up tomorrow." Next today again "Tomorrow", but I stay in bed two night and three days. Nobody would give me coffee at that time because at that time was busy, busy work day and night, 24 hours, 36 hours' work. You see, a lot of fish. Nobody would give me coffee. That is the only one, that guy (Price) he gave me coffee; that is all, but instead my knee swell up big, about 100 pounds something like me knee, so I can work no more. But still I talked to the foreman, "Why didn't you talk to Mr. Bendiksen to take me to the hospital"? He said, "I take you tomorrow; I am busy until the season is over." They gave me a note and he asked me, he said, "Well, Mr. Cuadra, back to Seattle when the sea-



(Testimony of Santos Cuadra.)

son is through." I stay in the hospital. That is what happened to my knee. I got an operation.

All of those machinists over there, he go to my bed. [115]

Q. Now have you worked at other canneries in years past?      A. Oh, yes.

Q. Before you worked for Mr. Bendiksen?

A. Well, I was working for Mr. Bishop for two years, 1952 and 1953.

Q. Who did you work for before that?

A. Oh, for Mr. Wingard's place.

Q. Wingard?      A. Wingard.

Q. Where is that, Ushigak?

A. No, Ugashik.

Q. Ugashik?      A. Ugashik.

Q. And who else have you worked for up there? Did you ever work for Libby?

A. No, I never. I think Libby, I don't know; I think Ugashik, at the Wingard Packing Company, before that I was working.

Q. Who else have you worked for up there?

A. Eh?

Q. How many years have you been working in Alaska?

A. Oh, at Wingard's place, about seven years, Bristol Bay.

Q. Who did you work for before that?

A. I was working for Pacific American Fisheries for nine years.

Q. You heard Mr. Bendiksen testify here? You heard him testify? [116]      A. Yes.

(Testimony of Santos Cuadra.)

Q. At these other places that you worked did you see salmon being loaded in barges?

A. Yes.

Q. You did?

A. In Alaska, I mean at Wingard's, it is different in loading that salmon for Mr. Wingard's scow.

Q. Yes.

A. We have secure plywood, I mean planking, or whatever do you call that?

Q. Pallet boards?

A. Pallet boards, yes, before the boys would load that case of salmon secure.

Q. The floor was secure?

A. Secure everything, but Mr. Bendiksen's place, no. He is the boss over there; he is now. And at that time I was accident he looked at me and then he go out and he go to the warehouse, I think; I don't know. One carpenter go downstairs and they break that kind of a board over there, you see, but still I stay there in the scow.

Q. Now this little platform or whatever it was that you stepped on, what part of it was your foot on when it turned over and threw against you?

A. It hit my right knee. I throw one case to pile up, so I missed to step that board on this side so the board went [117] and hit me in my knee.

Q. Yes.

A. And then I fall down. Somebody helped me to get up and put me in the corner here. About ten minutes somebody wouldn't help me and put in the

(Testimony of Santos Cuadra.)

bed, in my bed over there, you see. And then I told him, ask Mr. Bendiksen about 5:30 in the afternoon, bring me to a hospital because my knee is swelled up here," you see. The poor Filipino foreman, he said, "I asked already to Mr. Bendiksen who will take you for tomorrow morning." Tomorrow morning no more.

Q. Maybe I didn't understand you, but did you testify, did you say you saw Mr. Bendiksen fall down himself?

A. Why, sure; I see that.

Q. I see.

A. At that time I say to Mr. Bendiksen fall down that time, too.

Q. Where was that? Was that down in the barge?

A. That was down in the barge. After that——

Q. The same thing happened to him that happened to you?      A. Not the same time.

Q. But the same thing?      A. No.

Q. What happened to him?

A. That board here, he mistake the, what do you call it, the [118] step of that board, so the board went a little bit of a hole there, you know?

Q. Yes.

A. And then Mr. Bendiksen just swunged like that, you see. After that Mr. Bendiksen go up on desk, Alaska Queen deck.

Q. He didn't come back down any more?

A. No, he don't come back no more.

Q. He left you down there, though?

(Testimony of Santos Cuadra.)

A. All of the time watching the boys working over there, you see.

Q. Now, did you ever go ashore when you were up there?      A. No.

Q. Did you ever work ashore?      A. No.

Q. Did you spend all of your time on the ship?

A. On the ship all of the time.

Q. Was the ship in the water?

A. Yes, sir.

Q. Was the barge in the water?

A. Yes, sir.

Q. All of the time?

A. All of the time.

Q. Was there water underneath it?

A. Oh, sure; yes, sir. [119]

Q. And did you eat all of your meals on the ship?

A. I ate on the ship all of the time.

Q. Did you sleep all of the time on the ship?

A. All of the time on the ship, yes.

Q. Have you done gardening and agricultural work? Do you do that?      A. Last year?

Q. No, no, before you got hurt. Did you work on the farm?—agriculture—agricultural work?

A. Where, in Seattle?

Q. Farm labor? Do you do farm labor?

A. Oh, yes. In Seattle? Yes.

Q. And I mean, did you do it in California?

A. All over.

Q. All over?

(Testimony of Santos Cuadra.)

A. Yes. I got a farm here before that, in Seattle, Washington.

Q. What did you do on the farm? Did you squat down?

A. I drive tractor, drive horse and everything. I got a farm here and then White Center.

Q. Did you ever pick—work in the lettuce?

A. Pardon me?

Q. Did you work in the lettuce?

A. Lettuce, strawberries, and picking grapes, tending lettuce, and tending everything I work in because I worked as *hard* man, you know, in this country. [120]

Q. Do you have to get down close to the ground when you do that? A. Sure.

Q. Did you ever work asparagus?

A. I worked for 1929 in asparagus two years.

Q. Artichokes?

A. I get everything. I start at 2 o'clock, 1:30 in the morning cutting asparagus. Yes.

Q. Are you able to do that now?

A. No more. That is what I have been doing. Something hurt my knee.

Q. When you were on the ship did you ever clean up around the ship? A. Yes, sir.

Q. What else did you do around the ship besides butcher fish? A. Paint.

Q. Paint? A. Yes.

Q. Did he have you paint the ship?

A. Yes, sure; I paint all over. Any kind of job on the ship after the eight hour work. After eight



(Testimony of Santos Cuadra.)

hour, I take a bath on the ship, go to bed and sleep, and then come back again.

Q. Have you ever handled the lines; take up on the lines? And slacken them? [121]

A. Slack everything. The scow would bring the fish; then the boys who were working on the scow they throw the rope so I help them together.

Q. Now then, when the tide goes in and out—you know what the tide is?

A. Yes, I know that.

Q. Did they have to shift the lines from the ship to the dock; did they have to move the lines?

A. No.

Q. Take them in or let them out?

A. No.

Q. With the current?

A. No. I can't understand that.

Q. Was this a floating dock or was it on piles?

A. They got the water there.

Q. What?

A. They got the water there.

Q. Well, did you ever handle lines on the ship? Do you know what I mean?—the mooring lines that tie the ship to the dock? A. Yes.

Q. When did you do that?

A. Because I work in the ship then.

Q. You did that up there? A. What?

Q. You did that on the Alaska Queen?

A. Yes, sir.

Q. You would take them in and let them out?

A. Yes, sir.

(Testimony of Santos Cuadra.)

Q. When did you do that? When?

A. At the times when I had no accident.

Q. What was that?

A. At the time when I'm not accident.

I can't understand him.

The Court: Are you about through?

Mr. Poth: I am through, your Honor.

The Court: I think that we will recess then.

Mr. Merrick: Your Honor, what time do you want to start tomorrow?

The Court: We will recess until 9:30 o'clock tomorrow morning.

(Whereupon at 4:30 p.m., the hearing was adjourned to reconvene at 9:30 a.m., Wednesday morning, May 18, 1955.) [123]

Clerk: The case of Santos Cuadra versus Queen Fisheries, Inc., is now on for further trial.

The Court: I believe you had finished with your direct examination of Santos Cuadra.

Mr. Soriano: Yes, Mr. Cuadra is now on the witness stand for cross examination.

I wish to ask him one question, your Honor, prior to Mr. Merrick going into the cross examination.

Mr. Soriano: Mr. Cuadra, how old are you?

Mr. Cuadra: Fifty-three.

### Cross Examination

By Mr. Merrick:

Q. I believe, Mr. Cuadra, you testified that you haven't worked since this accident, is that right?

A. What.

(Testimony of Santos Cuadra.)

Q. You haven't worked? A. Worked?

Q. Yes, "worked"?

A. Since that time I have the accident, no.

Q. No? You haven't been able to work?

A. I have been unable to work. I tried to work for two days.

Q. Okeh, now, when was this two days that you tried to work? [124]

A. At the seafood company, dogfood——

Q. Where?

A. At the dogfood packing house, I mean.

Q. When, when?

A. Last year because——

Q. When last year?

A. I don't know what day. In August last year.

Q. Was it before you went to see Doctor Rickett? A. What?

Q. Was it before you went to see Doctor Rickett?

A. No. I think yes; it was about then.

Q. Well, you saw him June 30 and he testified in his report yesterday that you told him that you had tried to work two days. Was it prior to June 30, of 1954?

A. Yes, because Doctor Stewart just told me to practice your knee to work it.

Q. Yes.

A. And then I worked for one day for one hour and one-half. So I come back to Dr. Stewart.

Q. But you have not been able to work since that date?

(Testimony of Santos Cuadra.)

A. Then I have been to Dr. Rickett and then I got nothing to work, I got no money so I tried to work in the shop part of that dog food for two days and I got a bad pain in my knee. I can't stand it, and until now I never work yet. [125]

Q. So you have not been able to work since that day at all outside of those two days?

A. I willing to work but I can't stand it good because it is bothering my knee.

Q. Do you know Mr. John Caughlan, a Seattle attorney? A. Who?

Q. John Caughlan?

I am asking to have this marked for identification. A. Who is John?

Q. Do you know an attorney by the name of John Caughlan?

He is representing you in another lawsuit, isn't he? A. (No response.)

Mr. Merrick: I have a file here, your Honor. It is file number 476,394 of the Superior Court of the State of Washington for King County. I am having it marked for identification. I have a certified copy of the complaint that I want to put in evidence. I have checked this file out from the Clerk's office.

Q. I would like for you to look at this file. Handing you what is the complaint and the verification attached thereto. Is that your signature?

A. Yes.

Q. And that is verified by Mr. John Caughlan—your signature? A. Yes. [126]

(Testimony of Santos Cuadra.)

Q. That is your signature, isn't it?

A. Yes.

Q. Now do you recall starting this lawsuit with Mr. Caughlan in December of 1954?

May I have this marked for identification?

(Defendant's Exhibits Nos. 1 and 2 marked for identification.)

Q. Did you ever tell Mr. Poth or Mr. Soriano that Mr. Caughlan was representing you in another lawsuit?

Clerk: Defendant's Exhibits Nos. A-1 and A-2 marked for identification.

Q. Let's get an answer to this question? Do you know Mr. Caughlan? He is an attorney down in the Lowman Building.

A. I don't know. I don't remember that.

Q. Now, you are testifying under oath; you understand that you are supposed to tell the truth when you are up here? A. Yes, I know.

Q. And you say you don't know Mr. Caughlan?

A. John Caughlan?

Q. John Caughlan, an attorney?

A. On Second Avenue?

Q. Yes.

A. Yes, I think John Caughlan; I think I know him.

Q. And he is representing you in another lawsuit against Queen Fisheries, Inc., isn't he? [127]

A. Yes, because I like to work that time, you see.



(Testimony of Santos Cuadra.)

Q. Yes. Well, he is your attorney in this other lawsuit, isn't he?

A. Of course, at that time——

Q. Now, wait a minute; he is your attorney in this other lawsuit, isn't he?

A. Yes; for a different case, yes.

Q. Yes; it is a different case but you are suing for wages; you are suing Mr. Bendiksen, aren't you?—Queen Fisheries, Inc.?      A. Yes.

Q. And also, Luciano Vequilla is one of the plaintiffs in that case, isn't he?      A. Yes.

Q. You never told Mr. Soriano and Mr. Poth about this case, did you?      A. No, I haven't.

Q. This is the first they have known about it, this morning?      A. (No response.)

Mr. Merrick: I would like to offer Defendant's Exhibit A-2 in evidence. It is a certified copy of the original complaint on file in cause number 476,-394, a cause of action in the Superior Court for the State of Washington, County of King.

Mr. Soriano: I would like to object, your Honor. I would like to know what the purpose of it is.

Mr. Merrick: Well, read the complaint. That is the—he alleges that he was available and desired to go to work. Paragraph Six of the Complaint.

Mr. Soriano: There are several different plaintiffs here.

Mr. Merrick: He verified the Complaint.

There are several plaintiffs. Your Honor, the clerk's verification is on the rear of the certified copy.

(Testimony of Santos Cuadra.)

Mr. Soriano: I take it this was after Dr. Stewart said that he should try to work, right?

Mr. Merrick: It was filed December 20 of last year, 1954.

Paragraph Six, your Honor, I think impeaches him. At least that is the purpose of offering it.

The Court: I will overrule the objection.

You have no objection to the certified copy, I assume? Your objection doesn't run to the fact that Defendant's Exhibit A-2 is a photostatic copy?

Mr. Soriano: No.

The Court: It only goes as to whether it is material or relevant?

Mr. Soriano: As to whether it is material or proper to offer it. [129]

The Court: I think that it may have some bearing on the credibility, and on that basis the court will admit it.

(Defendant's Exhibit A-2 was received in evidence.)

Q. (By Mr. Merrick): Now, Luciano Vequilla, who is also one of the Plaintiffs in this action, is the gentleman who testified yesterday, is he not?

A. Yes.

Q. The man who is in the courtroom back here?

A. Yes.

Q. Now to go to Alaska to work in the canneries you generally take a physical examination, do you not?

You are given a physical before you go up there to work?

(Testimony of Santos Cuadra.)

A. Yes. Because Doctor Stewart wanted to put me to work and back to Alaska Queen.

Q. He gave you a "return to work" slip, didn't he?

A. After that—

Q. (Continuing) In May? A. Pardon me?

Q. You got a return-to-work slip from him in May, didn't you, so you could go to work in the canneries?

A. Dr. Stewart, that is why I go to the Union then but still I hurt my foot then. [130]

Q. But you were ready to go back to work in May, weren't you?—of 1954?

A. Well, the Doctor Stewart would force me so I worked one day one hour and one-half, so he bother me, so I said to Dr. Stewart I tell him I can't go back to work in the cannery because there is pain in my knee.

Q. You didn't start this present lawsuit until Mr. Bendiksen refused to hire you for last season, isn't that correct?

A. Yes.

Q. The answer is "yes," isn't it? A. Yes.

Q. Now on the day that you were hurt, what time did you start to work that morning?

A. Eight o'clock in the morning.

Q. Eight o'clock. You are sure it wasn't seven o'clock?

A. What?

Q. Wasn't it closer to seven o'clock?

A. At night?

Q. In the morning?

A. Well, I get up at five o'clock in the morning

(Testimony of Santos Cuadra.)

and then we start at eight o'clock in the morning again.

Q. Do you recall in your deposition testifying that you started to work at seven o'clock that morning?

A. No, I didn't start at seven o'clock in the morning, but I [131] get up at five o'clock in the morning for breakfast then.

Q. Do you recall the deposition we took in Mr. Poth's office on February 11 of this year?

A. Last year, or this year?

Q. This year?            A. Yes.

Q. Now, do you recall my questioning you thusly, "Now, what time had you started that day working on this barge"?

"Answer: In the morning."

"Question: What time in the morning"?

"Answer: Seven o'clock."

Do you recall answering that way?

A. No, I don't think I did.

Q. Well, anyway, you say you started at eight. How long did you work that day?

A. Well, we started at eight o'clock in the morning until 3:15; at that time there was accident.

Q. Did you work steadily all day?

A. Yes, sir.

Q. Did you have any breaks for lunch or for coffee?

A. No; you know that. You quit until twelve o'clock and go eat. At 12:30 we come back to work again.

(Testimony of Santos Cuadra.)

Q. In other words, you had a half-hour lunch hour? A. No chance. (No change.)

Q. But you worked from eight to three with a half-hour for lunch? [132] A. Yes.

Q. Did you place these boards in the barge that you described falling over yesterday?

A. Yes.

Q. You have loaded barges before, isn't that correct?—at canneries?

A. The Alaska Queen?

Q. No. Now when you worked for Wingard up there you loaded barges with canned salmon, didn't you? A. Yes, sir.

Q. You worked for Wingard for seven years?

A. For seven years, yes.

Q. Now this dunnage that you tripped over or fell over, you put some of that in the barge yourself, didn't you? A. (No response.)

Q. Did you spread it around the floor?

A. Well, everybody then.

Q. Yes.

A. Even Mr. Bendiksen, because he is the boss over there in the barge; he put the boards, you know, the boards not even.

Q. You say it was like that all day when you worked there?

A. Well, at the time there was accident at 3:15 I never came back to work because my knee swell up right away in the afternoon. [133]

Q. But you worked all day under those condi-



(Testimony of Santos Cuadra.)

tions from eight to three o'clock with a half hour off for lunch?      A. Yes.

Q. And you say you saw Mr. Bendiksen trip over one of these boards?

A. He just fell down; yes, I saw him there.

Q. That was before you were hurt?

A. Yes.

Q. Was he hurt?      A. Mr. Bendiksen?

Q. Yes.      A. I don't know.

Q. Have you ever hurt your knee before?

A. No.

Q. Have you hurt it since?      A. No, never.

Q. Have you hurt it since?

A. At the time of the accident?

Q. Yes.

A. Sure, I fell down and got hurt.

Q. No. Have you injured it again since the original accident up in Bristol Bay?

A. No, I never been to an accident in Bristol Bay.

Mr. Merrick: Do you have the income tax forms?

Q. (By Mr. Merrick): Now, in 1953 you had an income of \$1413.13, [134] is that correct?

A. That is right.

Q. And the only employer you worked for was Queen Fisheries, Inc.?      A. Yes.

Q. That was the year that you were hurt? In other words, you didn't work in the winter or spring of 1953?

A. Because I start to work in the Alaska Queen April 15.

(Testimony of Santos Cuadra.)

Q. Yes.

A. Paint deck and paint everything and scrub the floors before I go up to Alaska then.

Q. Well, in January, February, March, and the first 15 days of April, 1953, you didn't work?

A. No.

Q. You were around Seattle here, but you were just taking off? A. Yes.

Q. Usually would you lay off all winter when you worked in the canneries?

A. No. In 1952, 1951-52, I was working for the New Washington Hotel.

Q. I see. Well, if you had a good summer in Alaska, though, you would take all of the winter off, wouldn't you?

A. Oh, I got to work for the farm down Bristol Bay, I mean Winslow growing strawberries there.

Q. Well, you didn't work in any farm labor in 1952, did you?

A. I worked for two months then.

Q. Who did you work for in 1952 doing farm labor? Who?

A. Oh, Mr. Meyer's place for hoeing strawberries.

Q. Did you make any money working there?

A. Well, that is what I done for a living.

Q. You didn't report that in your income tax, though?

A. No, we didn't because one week, three days, two days' work in, you see.

Q. You don't bother to put that down?

(Testimony of Santos Cuadra.)

A. Well——

Q. In other words, in 1952 the people you worked for are Strand Fisheries. How long did you work for them?

A. Eleven days.

Q. In 1952?

A. Eleven days. About 11 days.

Q. Eleven days. And Queen Fisheries, Inc.; how long did you work for them?—in 1952?—two months?

A. Two months, yes.

Q. And the New Washington Hotel, how long did you work for them?

A. Nine months, I think; nine months.

Q. And the New England Fish Company, how long did you work for them?

A. About one month.

Q. Yes. [136]

And the Washington Fish and Oyster Company, how long did you work for them?

A. About——

Q. (Interposing) One month?

A. (Continuing) ——I don't know; three weeks or something like that.

Q. And that is a little bit more than twelve months. How long did you—are you certain you worked nine months for the New Washington Hotel?

A. Nine months, yes.

Q. Yes. Now actually when you were injured up there in 1953, you didn't lose any wages, did you?

A. No.

Q. You were paid the guarantee?

(Testimony of Santos Cuadra.)

A. Yes, I was paid the guarantee. Those people guaranteed me that.

Q. And then when you got back here to Seattle you were on Alaska Workmen's Compensation, weren't you? A. Yes.

Q. And they paid you sixty-five per cent of your weekly pay at the New Washington Hotel, didn't they? A. Yes.

Mr. Merrick: May we have these marked for identification?

Clerk: Defendant's Exhibit A-3 marked for identification. [137]

(Whereupon, Defendant's Exhibit No. A-3 was marked for identification.)

Q. And you didn't have to pay any income tax on this money that you got from the Alaska Workmen's Compensation Act, did you? A. Yes.

Q. You paid no income tax on that?

A. Yes.

Q. You say you did? A. Yes.

Q. You didn't report it?

A. Eh? Oh, that one?

Q. Yes. You didn't pay any income tax on this?

Showing you Defendant's Exhibit No. A-3 for identification, will you look at those cancelled checks, and can you identify them?

A. Yes, that is my checks.

Q. Is your signature on each one of those?

A. Yes.

Q. Seventeen checks in all. Those are your signatures on all of those checks, is that right?

(Testimony of Santos Cuadra.)

A. Yes.

Q. And those checks total \$1,237.52. Now, that is the money that you received under the Alaska Workmen's Compensation Act, is that right? [137a]

A. Yes.

Q. And they paid you that money up through March of 1954, isn't that correct? A. Yes.

Q. When Dr. Stewart said that you were able to go back to work? A. Yes.

Q. And then you were cut off?

A. No. I still, Dr. Stewart take care of my knee.

Q. Well, he told you that you were ready to go back to work late in March, didn't he?

A. Well, he told me that I work; yes, I told you yesterday and I work for one hour and one-half there and then I come back to Dr. Stewart.

Q. I see.

A. Because it just swelled up my knee.

Q. Well, after you got through here with the Alaska Act you tried to file a claim under the Longshoremen's Act, didn't you? A. No.

Q. You didn't go down to 905 Second Avenue Building and file a claim with the Longshoremen & Harbor Workers—— A. No.

Q. Department? A. No. [138]

Q. You have no recollection of ever being down there? A. No.

Q. Now when you were working up there in the cannery deck you worked under a Filipino cannery foreman, didn't you? A. (No response.)



(Testimony of Santos Cuadra.)

Q. Didn't they have a boss for the Filipino boys?      A. When, last year?

Q. All of the time?

A. Oh, there is a Filipino foreman, like Wingard's——

Q. The same as Wingard?      A. Yes.

Q. It is just like any other cannery?

A. No, Wingard's not my boss. There was a Filipino foreman there.

Q. What was that?

A. At Wingard's cannery there is a Filipino foreman. His name is——

Q. Yes.

A. Because Wingard, he go out all of the time.

Q. Well, there is a Filipino cannery foreman on the Alaska Queen, don't they?      A. Yes.

Q. He directs you in your work?      A. Yes.

Q. The same as you do at Wingard or at any other cannery?      A. Yes. [139]

Q. Now, how did you get your job with Mr. Bendiksen?      A. The Union did.

Q. Yes. And what Union is that?

A. American Federation of Labor.

Q. And you were dispatched out of the Cannery Workers Union to go to work in the cannery for Bendiksen, is that right?      A. That is right.

Q. And you were paid under the Cannery Workers contract?      A. Yes.

Q. And under the cannery workers contract you get a two-months' guarantee, isn't that right?

A. That is right.

(Testimony of Santos Cuadra.)

Q. That is the contract that the union has with the Alaska Salmon Industry, isn't it?

A. Yes.

Q. And you are familiar with that contract, aren't you?      A. What?

Q. You are familiar with the terms of that labor contract, aren't you?      A. Yes.

Q. You have worked up there for several years under the same contract?

A. The same contract, yes.

Q. Now the medical and hospital bills that have been incurred [140] as a result of this accident, you haven't paid any of those, have you?

A. (No response.)

Q. You have expended no money for medical or hospital bills arising out of this case?

A. No.

Mr. Merrick: I want to offer Defendant's Exhibit No. A-3 in evidence.

Mr. Soriano: No objection.

The Court: Defendant's Exhibit No. A-3 may be admitted.

(Defendant's Exhibit No. A-3 received in evidence.)

Mr. Merrick: Defendant's Exhibit No. A-2 is in, your Honor.

Q. Actually the first time that Mr. Poth or Mr. Soriano knew about this lawsuit was this morning, wasn't it?      A. (No response.)

Q. You never told them about it?      A. No.

Q. The answer is "no," isn't it?      A. Yes.

(Testimony of Santos Cuadra.)

The Court: He said "no" before.

Mr. Merrick: That is all. [141]

Redirect Examination

By Mr. Poth:

Q. How did you happen to bring this lawsuit?  
Did anyone send you to Mr. Caughlan?

A. (No response.)

Q. Did anyone have you go to Mr. Caughlan's office?  
A. Yes.

Q. Who was that?

A. That is the attorney.

Q. Who? A. John Caughlan.

Q. Who had you go to Mr. Caughlan's office?

A. Me and Vequilla.

Q. Who told you to go, if anyone?

A. The business agent for the American Federation of Labor.

Q. The business agent? A. Yes.

Q. What is his name?

A. I forget the name of the business agent because at that time there was accident and I never go to the Union no more.

Q. Is he a Filipino? A. Yes, sir.

Q. Did he tell you to go?

A. Yes, because he had for somebody else.

Q. Can you read? A. (No response.)

Q. Can you read English?

A. Oh, a little bit. I can't understand it good.

Q. Can you read it?

A. Yes, but I can't understand very good.

(Testimony of Santos Cuadra.)

Q. Did you ever read this complaint before?—that you signed? Did you ever read what you signed?

A. No. I signed, but I can't read. I can't understand.

Q. Starting right here can you read that paragraph where it says "Three" there; can you read that? What does it say?

A. I can't read that.

Q. What does this say here?

A. Yes, that is my name. That is my name.

Q. What is after your name?

A. Santos E. Cuadra.

Q. What is after that? What does that say?

A. No, I can't—I can read my name, but I can't read that, that one there.

Q. You say the Union told you fellows to go to Mr. Caughlan's office? A. Yes.

A. Oh, I know already that Mr. Bryan is the business agent there.

Q. He told you to go? A. Yes. [143]

Q. He told you to go?

A. Yes. So we got three people to go to John Caughlan there, the attorney.

Q. Were there papers there? A. What?

Q. When did you sign the papers, when you went to the office?

A. Yes. I went to the office, three of them.

Q. Who told you to sign?

A. That secretary over there; "you sign your name here."

(Testimony of Santos Cuadra.)

Q. The secretary said, "You sign your name?"

A. Yes, sir.

Mr. Poth: I have no further questions.

Recross Examination

By Mr. Merrick:

Q. How long have you worked in the canneries in Alaska? A. Since 1924.

Q. You have worked continuously?

The Court: 1924?

The Witness: 1924 the first time.

Q. When did you come from the Philippines?

A. In 1923.

Q. And how long have you worked under a union contract up there? A. Since 1933.

Q. Did you used to belong to Local 7?

A. Well, 1943 I belong to Local 7.

Q. You knew John Caughlan while he was attorney for Local 7, didn't you?

A. And then I quit for five or seven years; I don't know.

Q. You knew Mr. Caughlan when he was attorney for Local 7, didn't you—he and Mr. Hatten?

A. Well, some—that business agent just told me there was a good lawyer there. I don't know.

Q. Well, you wanted to sue Mr. Bendiksen for these wages, didn't you?

A. Well, the business agent just told me to go to Mr. Caughlan there because Bendiksen hired somebody else——

Q. Yes.



(Testimony of Santos Cuadra.)

A. (Continuing) —to go to Alaska last year because I received that letter from Mr. Bendiksen in 1953, in November that Mr. Bendiksen is not opening that cannery this year, last year.

Q. Yes. And you knew under the contract that you were entitled to preference, weren't you?

A. (No response.)

Q. Under the contract boys who worked in 1953 were supposed to go out first in 1954, isn't that right?

A. Yes, sir. That is right, yes.

Q. And you knew that? A. Yes. [145]

Q. And that is why you went to see Mr. Caughlan because you felt you should have gone out ahead of these other boys?

A. Yes. Mr. Bryan, the business agent, want to send me over there, you see.

Q. That has been in the contract for years, hasn't it? A. Yes; that is right.

Q. And you know all about those contracts?

A. Yes, that is right.

Mr. Merrick: I have no further questions.

Mr. Poth: That is all.

The Court: That is all. You may be excused.

(Witness excused.)

Mr. Soriano: The Plaintiff rests, your Honor.

Mr. Merrick: Your Honor, could I have a short recess to call Mr. Bendiksen. He is the only witness I have. His testimony is going to be short. He is the only witness we have. Our case is practically in now.

Mr. Poth: If your Honor please, if it would save time we could stipulate as to the amount of the medical payments and as to the amount of compensation and stipulate that the carrier who paid those sums is subrogated in this action for the recovery of those amounts.

Mr. Merrick: Well, I am willing to stipulate on that, but I wanted to get a little testimony in from him [146] on one aspect of the operation.

The Court: We will take a short recess, but we can't wait very long. The court will take a ten-minute recess.

(Short recess.)

Mr. Merrick: I will call Mr. Cuadra as an adverse witness.

### SANTOS CUADRA

a witness called by the defendant as an adverse witness, previously sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Merrick:

Q. Mr. Cuadra, you worked on the Alaska Queen two years, did you not? A. Yes, sir.

Q. And to run that cannery they have to tie up alongside of the beach, do they not? A. Yes.

Q. In other words, it has to be tied up to the shore? It can't run without the water from the shore, isn't that correct? A. Yes.

Q. In other words, you have to pipe the water over from the [147] beach onto the floating cannery to make it work? A. No.

(Testimony of Santos Cuadra.)

Q. Well, you get your water from the beach to run this cannery, don't you? A. Oh, yes.

Q. There is no water plant aboard that floating cannery? A. No.

Q. And you need this water to run the cannery, isn't that correct?

A. The water, they got plenty water on the Alaska Queen, you know.

Q. No, but I mean you had to get fresh water from the beach to run the cannery, isn't that right?

A. Yes, sir.

Q. And you pipe it over from the beach onto the ship? A. Yes.

Q. Now what is this warehouse up there used for? A. (No response.)

Q. Do the cans that come out of the retort after they are cooled, they are taken into the warehouse, I mean before they are cooled they are taken into the warehouse, aren't they? A. Yes.

Q. And then taken in there so they can cool?

A. Yes. [148]

Q. There are no facilities on board to cool the cans, are there, when you are canning?

A. No.

Q. Also, all of the casing of the canned salmon is done in the warehouse, isn't it?

A. Yes, sir.

Q. That is done by the natives?

A. I don't understand.

Q. Well, the sticking of the cans in the cases,

(Testimony of Santos Cuadra.)

that is done by the natives in the warehouse, isn't it?

A. No.

Q. Who does that? Do the boys do that?

A. Oh, the native boys do it.

Q. Yes, the natives do that. All right.

And the salmon after it is cooled in the warehouse and put in the boxes in the warehouse, it is stacked in the warehouse, isn't it; it is stored there?

A. Yes, sir.

Q. And then when you get ready to take it out to send it back to Seattle they bring it out of the warehouse and load it into these barges?

A. Yes, sir.

Q. Do you know how many cases of salmon they canned up there in 1953?

A. I don't; I don't know that time because there were a lot [149] of fish; day and night work, and overtime.

Q. Could it be approximately 40,000 cases?

A. I think it is more than that.

Q. Anyway, there is no place on board to store this salmon, is there? It has to be stored in the warehouse?

A. The warehouse, I think it is a warehouse for the cases over there, so they load all of the time the salmon for the scow, you see.

Q. Well, after the salmon is canned on board the Queen, it is taken and stored in the warehouse, isn't it?

(Testimony of Santos Cuadra.)

A. Some salmon is piled for the Alaska Queen because the warehouse full house; all full house that warehouse, they got no place to put the cases of salmon so put the Alaska Queen in a pile.

Q. Now they have a separate crew to bring up the Alaska Queen, do they not? A. What?

Q. A separate crew brings up the ship from Seattle? A. Yes.

Q. They have a master, right? A. Yes.

Q. Deck hands? A. Yes.

Q. An engineer? A. Yes. [150]

Q. And a cook? A. A cook, too.

Q. Those people are hired out of different unions than the Cannery Workers Union, aren't they? A. I don't think so. I don't know.

Q. Well, they are not out of the Cannery Workers Union? A. Yes.

Q. They don't work on a season's guarantee, do they? A. Oh, those deckhands?

Q. Yes. A. I don't know.

Mr. Merrick: That is all.

For the record I would like to show that Mr. Bendiksen is not here, and it is now 10:40 o'clock a.m., and that Court convened at 9:30 o'clock, a.m.

And also for the record I would like to show that court convened at 2 p.m. yesterday and Mr. Bendiksen did not appear until ten minutes to three o'clock, p.m.

Mr. Merrick: I will call Mr. Bendiksen now.

Will you take the witness stand?



ERLING H. BENDIKSEN

a witness called for the defendant, and in his own behalf, was previously sworn, and he testified as follows: [151]

The Court: I think that you have been sworn before, haven't you?

Mr. Bendiksen: Yes, sir.

Direct Examination

By Mr. Merrick:

Q. You are the same Mr. Bendiksen who testified yesterday? A. Yes, sir.

Q. What is your position with Queen Fisheries, Inc.?

A. Do you mean the management, do you mean?

Q. Yes.

A. Well, I am pretty much the manager or the superintendent.

Q. What business do you engage in with Queen Fisheries, Inc.? A. Salmon canning.

Q. All right now how long have you been engaged in that business?

A. Oh, about five or six years.

Q. Now, I believe you testified yesterday that the Alaska Queen is a boat of approximately 297 tons? A. That is right.

Q. And what is it used for?

A. Well, for—it is used for, well, for canning pretty much.

Q. All right now, where do you conduct your canning operations? A. In Bristol Bay.

(Testimony of Erling H. Bendiksen.)

Q. And how long is a season in Bristol Bay, the canning season? [152]

A. Oh, it is about a month as a rule.

Q. Generally about a month?

A. Generally, yes.

Q. Now during the period when you are not canning salmon where is the Alaska Queen moored?

A. Oh, it is moored in Seattle as a rule.

Q. How do you get it up to Bristol Bay and back?

A. By power.

Q. Do you have a regular crew to bring it up?

A. Yes.

Q. Who is in that crew?

A. How many men, do you mean?

Q. Yes.

A. Just about two engineers, three deckhands, a skipper and a mate, and the cook.

Q. And a cook? Now do you have a separate crew for your cannery operation?

A. Yes, we have a separate crew.

Q. Where do you obtain these employees for the cannery?

A. Oh, some of them are hired in Seattle and some of them are hired in the Bristol Bay area.

Q. Now the people hired in Seattle, are they generally Filipino boys?

A. Yes, those I have hired. Now I am talking about the common laborers. [153]

Q. And the people that you hire in the Bristol Bay area are they generally native Alaskans?

A. Yes.

(Testimony of Erling H. Bendiksen.)

Q. And are they generally referred to as "resident cannery workers"?

A. Yes, that is right.

Q. And the Filipino boys that come up from Seattle, are they referred to as non-residents?

A. Well, they are at this time, at the present time.

Q. In other words, there is a separate Union contract for each group?

A. Yes, there is a separate contract.

Q. Now the Filipino boys that come up from Seattle, how are they paid up there when working in a cannery operation?

A. Well, they are paid—first of all they get a two months' guarantee.

Q. They get two months whether they only work one month or four or five weeks?

A. That is right.

Q. All right.

A. And then they get overtime after so many hours.

Q. Yes.

A. And also they get overtime for any special work, like longshoring which they get at this time when this [154] accident occurred. It is covered in their agreement if any longshore work is done, then it is special work.

Q. Now how is your crew on the vessel paid, the group that brings the vessel up to the fishing grounds and back? How are they paid?

A. Oh, they are paid by the month, and also

(Testimony of Erling H. Bendiksen.)

they are under a different agreement which gives them a percentage of the pack. What I mean, they get so much a thousand cases. Like you might say, some of them would come in a scale of \$20 a thousand and others maybe \$40 a thousand.

Q. In other words, they share in the profits?

A. Well, it wouldn't be exactly profit. It could be a loss and still they would get so much a case. That is the way their scale is set up.

Q. But the amount they are paid depends on the size of your pack?

A. On the size of the pack, you see.

Q. Now is there separate supervision for the cannery crew, for the Filipino boys?

A. Separate——

Q. (Interposing) Supervision?

A. Yes, as a rule we have separate supervision.

Q. And is there separate supervision for the crew that sails the vessel? A. Oh, yes. [155]

Q. Now aboard the Alaska Queen do you have separate living quarters for the Filipino boys?

A. Yes, we have one room we use for that.

Q. Are there any facilities up there to eat ashore? A. No.

Q. Now regarding this barge where the accident allegedly occurred, how many barges do you have?

A. Oh, we have one barge of this type they are referring to here of the accident.

Q. And what is the approximate size of that barge?

A. It is about 22 feet by 60 feet.

(Testimony of Erling H. Bendiksen.)

The Court: How many barges, did you say?

The Witness: Oh, we have other barges, power barges. We have one barge that is 86 feet by 24 feet that goes up from Seattle.

Q. What other barges do you have?

A. Oh, we also have other tenders.

Q. Well, how many all together?

A. Oh, we have two others we carry fish on.

Q. Well, this particular barge, that has no power on it, I gather?

A. That is right.

Q. Is it steel or wood constructed?

A. It is wood constructed.

Q. And what is it used for primarily? [156]

A. Well, it is used mainly for receiving fish and handling salmon cases.

Q. Yes. Now when it is moved, who moves it, referring to this barge?

A. Are you referring to the towing it or——

Q. Yes.

A. It would be the tenders.

Q. Do the Filipino boys take any part in moving it?

A. No.

Q. Now, regarding your cannery up there, when it operates is it always tied up to the beach?

A. Yes.

Q. And why is that?

A. Well, we are set up such that we have to be tied up to shore for water and also for casing the salmon and cooling and storing.

Q. What do you use water for aboard this cannery?



(Testimony of Erling H. Bendiksen.)

A. Oh, we use water for the boilers and for washing the fish, and so forth.

Q. And how do you get your water from the beach; is it piped?

A. It is piped in from a lake nearby.

Q. Now, this, do you have facilities aboard to store all of the salmon that is canned?

A. No.

Q. And where is that stored? [156a]

A. It is stored ashore.

Q. Now what is the warehouse used for?

A. Well, it is used for casing and storing the salmon.

Q. Would you explain what you mean by "casing"?

A. Well, I mean by casing is you take cans out of the coolers or trays or baskets that you cook them in and put them in the boxes, shipping containers.

Q. Yes.           A. That is what I mean by that.

Q. In other words, you have to tie up there to operate the cannery?           A. That is right.

Q. Now, regarding this dunnage for flooring or platforms which was referred to yesterday, is that a standard type of dunnage that you use?

A. (No response.)

Q. Is there any standard type of dunnage?

A. Oh, well, I wouldn't say there is any standard type of dunnage, on any ships or barges. I have seen dunnage used by other companies. It is varied in sizes.

(Testimony of Erling H. Bendiksen.)

Q. Well, do you use pallets in this type of barge?

A. Referring to pallets you could check in Seattle here and find all different sizes of pallets and it will be the same in this grating that we are talking about here.

Q. Well, could you use pallets on this type of barge? [157]

A. Well, pallets, we are talking about pallets, the only time I have heard of pallets is where you are stacking something.

Q. In other words where you use a lift truck?

A. For lift trucks, that is right.

Q. There are no lift trucks up here in Bristol Bay?

A. Well, we use lift trucks; we use pallet boards. We have pallet boards too, but pallet boards are not used for gratings, as a rule. They are not practical for gratings because the pallet boards are not tightly boarded up. There is a space between each board.

Q. Do any of the canneries nail this dunnage to a floor of a wooden barge?           A. No.

Q. Why not?

A. It cannot be done because they all use the barges for fish and they can't use any grating on them when you handle fish because they have got to be washed down clean; so there is no grating on the barges at the time of receiving fish.

Q. Do you have any recollection of Mr. Cuadra being injured up there?           A. (No response.)

(Testimony of Erling H. Bendiksen.)

Q. There is some testimony here yesterday that you saw it. Do you recall? [158]

A. Oh, I expect I probably did. Sometime you know a fellow would fall down, and it wouldn't be anything serious, you know. And like he mentioned yesterday that I fell down, I don't even remember that because I might have stumbled on something and thought nothing of it. That is probably common by many of those places, you know, you do a lot of work in a short time.

Q. Is there any interchange between the cannery crew and the crew that brings the vessel up and back? In other words, do they perform or, for example, do any of the cannery boys do any work in the engineering department?

A. Referring to main engines and propulsion?

Q. Yes. A. No.

Q. In other words, they stay strictly in the canning operation?

A. Yes. I would say, I heard it referred to, some painting. The Filipinos are, some—they wash—their job is to wash down the canneries, and there has been time when they have done a little painting, something like they do in other shore canneries; they do a little painting in shore canneries as well.

Q. In other words, their work is confined primarily to the cannery, and to the cannery deck?

A. To the cannery part of it, yes. [159]

Q. Are these cannery employees ever aboard when the vessel gets under way?

A. Not in our operation up there, they aren't.

(Testimony of Erling H. Bendiksen.)

Q. How do you bring them up?

A. We bring them up by plane.

Q. And how do you bring them back?

A. By plane.

Mr. Merrick: That is all that I have.

### Cross Examination

By Mr. Poth:

Q. Is it more economical to bring them up by plane and back by plane rather than to have them sail up on the ship?

A. Oh, it probably is, I would say, but they are treated just like all of the other cannery workers in the Bay that works in the store stations.

Mr. Poth: I have no further questions.

The Court: Mr. Bendiksen, are all your cannery workers covered by industrial insurance?

The Witness: Yes, under the Alaska Act.

The Court: Under the Alaska Act. How do you operate under that law up there?

The Witness: Well, we report to the insurance; we have insurance that covers it.

The Court: Do you have an insurance carrier?

The Witness: Yes. [160]

The Court: All of your cannery workers were under that?

The Witness: Under that, yes; that is right.

The Court: Under that protection?

The Witness: That is right.

The Court: In other words, you have covered all

(Testimony of Erling H. Bendiksen.)

of these cannery workers under the Industrial Insurance Law of Alaska?

The Witness: Yes.

Mr. Merrick: We have a report. Will you please mark this for identification?

Clerk: Defendant's Exhibit No. A-4 is marked for identification.

(Defendant's Exhibit No. A-4 marked for identification.)

The Court: Are your deck crew on the Alaska Queen covered by the same?

The Witness: The deck crew are covered a little differently.

The Court: Differently?

The Witness: Because they come under the sailing, you know, of the ship, so it is a different report.

Q. (By Mr. Merrick): Handing you what has been marked for identification as Defendant's Exhibit No. A-4 for identification, can you identify the signature of Mr. Boone thereon? [161]

A. Yes. I can identify that.

Q. Who is Mr. Boone?

A. Oh, he was the bookkeeper for me last year.

The Court: The bookkeeper for whom?

Witness: For us.

Q. For us? What was Mr. Price's job—the storekeeper?

A. Oh, Price was hired for sort of extra help as storekeeper and timekeeper.

Mr. Merrick: I would like to offer this in evidence. It is a report of the claim.



(Testimony of Erling H. Bendiksen.)

Mr. Poth: I will object to it on the ground of irrelevancy, your Honor.

Mr. Merrick: It is a report of the accident under the Act.

I have no objection to it going in, your Honor. As to the matter of relevancy, I think that it is for the Court to determine that anyway. Counsel apparently has no objection to its authenticity.

The Court: The court will overrule the objection.

Mr. Merrick: I have no further questions.

(Defendant's Exhibit No. A-4 admitted in evidence.)

Cross Examination—(Continued)

By Mr. Poth:

Q. Now this crew that sailed the ship up, including the [162] engineer, were they under the Alaska Act?

A. Are you referring to the insurance now?—or the Agreement, the Working Agreement?

Q. I am referring to the insurance. Were they under the Alaska Act?

A. Well, they are under whatever they come in there. We have so many of those different ways of covering that that I have to look it up. I couldn't say this minute just how that is covered. We have a policy to cover all that, and it is just too much details involved.

Q. In other words, you have a general policy that covers you for any kind of compensation, lawsuit, or liability, is that right?

(Testimony of Erling H. Bendiksen.)

A. Yes, to cover all of the different jobs, you see.

Q. And you let the insurance company decide where the proper coverage belongs where there is an injury, is that right?

A. Well, they cover it this way before we would sail; we cover the skipper and the crew on the boat come under one policy we might say and the cannery workers come under something else. We are covered on the same basis as the other companies.

Q. But you let your insurance company decide?

A. No, we have to protect ourselves. I don't buy insurance because they think we should have it. I have to buy [163] it to protect myself.

Q. So you have the men that sail the ship under one kind of insurance and you have the cannery workers under a different kind, is that right?

A. Well, I have it like I say, I have to really check up on that. It is too much involved to explain to you without having some of the things in front of me.

Q. In other words, you pay your premiums, you know that, is that right?

A. Oh, yes, we pay our premiums and we also have full coverage, the same as all of the other companies operate. That is all that I can say.

Q. And that full coverage covers you no matter what Act the men might come under when they are injured?

A. Well, that is right; like we have a carpenter. He is covered under whatever policy it takes to cover a carpenter.

(Testimony of Erling H. Bendiksen.)

Mr. Poth: I have no further questions.

Mr. Merrick: That is all unless the Court has some questions.

The Court: Do you wish to argue the matter now?

Mr. Merrick: Yes, your Honor.

(Argument by counsel; Mr. Soriano making the opening argument.) [164]

[Endorsed]: Filed November 23, 1955.

---

[Endorsed]: No. 14969. United States Court of Appeals for the Ninth Circuit. Santos Cuadra, Appellant, vs. Queen Fisheries, Inc., a corporation, and E. H. Bendiksen, doing business as E. H. Bendiksen Co., Appellees. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: December 7, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 14969

SANTOS CUADRA,                      Plaintiff-Appellant,

VS.

QUEEN FISHERIES, INC, a corporation; et al.,  
Defendant-Respondents.

## STATEMENT OF POINTS AND DESIGNATION OF RECORD

Comes now the plaintiff-appellant herein and pursuant to Rule 17 (6), and hereby adopts the Statement of Points relied on upon appeal and the Designation of Record on Appeal appearing in the typewritten transcript of record received from the Clerk of the District Court in the above entitled cause.

Dated this 5th day of December, 1955.

ZABEL & POTH,  
/s/ By OSCAR A. ZABEL,  
Attorneys for Plaintiff-  
Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed December 8, 1955. Paul P. O'Brien, Clerk.